

SURREY COUNTY COUNCIL**CABINET MEMBER FOR LOCALITIES AND COMMUNITY WELLBEING****DATE: 14 MARCH 2017****LEAD OFFICER: YVONNE REES, CORPORATE DIRECTOR, CUSTOMER & COMMUNITIES****SUBJECT: CONTRACTS FOR THE PROVISION OF POST MORTEM SERVICES TO HM CORONER****SUMMARY OF ISSUE:**

Formal contracts for the provision of body storage and post mortem (PM) facilities to HM Coroner do not currently exist with the current providers. This report sets out the current challenges facing the coronial pathology service nationally and highlights the need for the award of formal contracts for the provision of these vital services to the Surrey Coroner.

Due to the commercial sensitivity involved in terms of the cost of providing the service, the price of the services are contained within Part 2 of this report.

RECOMMENDATIONS:

It is recommended that contracts for a period of up to three years be entered into with Surrey and Sussex Healthcare NHS Trust (SSHT) and Frimley Health NHS Foundation Trust (FHT) for the provision of body storage and PM facilities for the Surrey Coroner.

REASON FOR RECOMMENDATIONS:

HM Senior Coroner for Surrey is responsible for providing the coronial service within the SCC administrative area. By virtue of The Coroners and Justice Act 2009, SCC is responsible for meeting all the costs of the coroner service. In order to make the best use of public funds, SCC supports the senior coroner by putting in place contracts and contracts for the major areas of activity which includes the provision of body storage and PM facilities.

SCC does not have its own mortuary facilities and body storage and PM facilities are provided to the Coroner by SSHT and FHT. However, no formal contracts existed either in regards to price or performance and it is now essential to put more formal arrangements in place and to secure the terms of this service provision for the longer term.

DETAILS:

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 eg where a Deprivation of Liberty Safeguard Order (DoLS) is in place
2. In some cases the Coroner will order a PM to establish the cause of death. In these cases, bodies are taken to a pre-designated mortuary. In 2015, of 4,605 deaths referred to the Surrey Coroner, 2,114 required a PM (46% of deaths referred).
 3. On behalf of the Senior Coroner, SCC ensures there is adequate storage capacity for Coroner's bodies and that the Coroner has access to PM facilities. SCC does not have its own public mortuary facility and so like many other coroner areas across England and Wales it has always used local NHS hospitals which have the necessary facilities for this purpose. Until now these arrangements with our local NHS providers have never been formalised in the form of a contract or service level agreement. It should be noted that there are no private sector providers of PM facilities anywhere in England and Wales.
 4. In 2014 Peter Hutton, Consultant Physician UHB NHS Foundation Trust was appointed by the government to review and report on the forensic pathology service in England and Wales and his report was published in March 2015. Whilst the review was intended to focus only on forensic pathology it was not possible for him to consider this without looking at the coronial pathology service. In this respect he concluded that the coroner pathology service was showing severe signs of stress and that its future was fragile. In some areas, for example Kent and Sussex the NHS was considering, or had withdrawn from providing PM facilities. The main reasons for this being that coronial PMs (a) was not part of core business, (b) full cost recovery was not being achieved (c) that significant capital investment was necessary in PM facilities to ensure continued accreditation by the Human Tissue Authority, or (d) a combination of all three.
 5. For these reasons it is prudent to secure the provision of PM facilities through more formalised arrangements with our current providers, SSHT and FHT who between them provide coronial PM facilities at East Surrey Hospital, Frimley Park Hospital, Royal Surrey County Hospital and St Peter's Hospital. This will provide some assurance of service provision, to reduce the risk of the coronial system collapsing in the event that one or both providers withdrew or reduced the available service. The inevitable distressing consequences for bereaved families could increase the risk of reputational damage to the council. This is especially so given that NHS PM facilities in nearby surrounding coroner areas are at full capacity and so there is little prospect of finding alternative providers for this work within a reasonable geographical area. Sending coronial bodies greater distances would lead to additional cost to the council and distress to the bereaved families.
 6. The Trusts are keen to continue to perform the Surrey Coroner's work and whilst we finalise longer term arrangements, we have sought to enter into interim six month Service Level Agreements (SLA) to secure PM provision on a cost/PM basis. A SLA is in place with FHT and the price for a routine PM is

set out in Part 2 of this report. The SLA expires on the 31st March 2017. Negotiations to finalise a similarly priced short term SLA with SSHT are continuing.

7. The current level of expenditure on PMs with FHT and SSHT is in the region of £320,000 a year. Normally this level of expenditure would require a full tender process compliant with the European Procurement Regulations and SCC's Procurement Standing Orders. However, in the absence of a private sector provider and with no capacity available at nearby Trusts to take on the Surrey Coroner's PM work, we are left with no alternative but to seek to enter into arrangements with the current providers.
8. Our decision not to compete the opportunity is supported by Regulation 32(2)(b)(ii) of the Public Contract Regulations which states that a Negotiated Procedure without Prior Publication may be used where services can be supplied only by a particular economic operator where competition is absent for technical reasons.
9. This report recommends that contracts for a period of up to three years be negotiated and awarded to FHT and SSHT on the same basis as the short term SLAs referred to in Paragraph 6.

CONSULTATION:

10. There are no other parties or stakeholders involved in this process other than SCC, the two NHS Trusts concerned and HM Senior Coroner for Surrey.

RISK MANAGEMENT AND IMPLICATIONS:

11. In some areas the NHS has withdrawn from providing body storage and post mortem facilities leaving the Coroner exposed to a potential breakdown in the system for death investigation and certification, with the inevitable consequences for bereaved families in terms of delayed death registration and funeral arrangements. In order to mitigate this risk it is essential that the current informal arrangements with the current local providers are formalized to secure this vital service. If we do not, whilst the Coroner is legally responsible for providing the service and is personally at risk, there is also a significant risk to the reputation of SCC. This risk exists because the public and the media perceive the council to be responsible for delivery of the service by virtue of the fact that it has the duty to meet all the costs.
12. In the absence of a formal SLA/contract as regards the price of the service SCC is at risk of unplanned and unbudgeted price increases over which it has little or no control given the local Trusts are in a monopoly position.
13. The contracts include a clause that will allow SCC to terminate with 6 months notice should priorities change or alternative providers become available at a more competitive price.

Financial and Value for Money Implications

14. Full details of the contract value and financial implications are set out in the Part 2 report.

15. The new contracts will ensure that the price remains at a level that is sustainable given the continuing budgetary pressures faced by SCC. In addition key performance indicators and operational requirements will be formally established for the first time.
16. Discussions with other local authority areas indicates that the price per PM proposed in these contracts represents good value for money when compared to other areas.

Section 151 Officer Commentary

17. This contract formalises the arrangements for mortuary services that is already in place. It provides some assurity of future provision within a market where there is limited local provision available. The agreed charges are the same as those already being incurred, the budget for which is provided for within the Medium Term Financial Plan.

Legal Implications – Monitoring Officer

18. The Coroners and Justice Act 2009 places a number of duties on relevant Councils in relation to the provision of the Coroner's Service. SCC is the relevant council for the administrative area of Surrey and is responsible for the following:
 - The appointment and remuneration of HM Coroner for Surrey
 - The provision of personnel needed by HM Coroner to carry out his functions
 - The provision of accommodation that is appropriate to the needs of HM Coroner in carrying out his functions.
 - Indemnifying HM Coroner against legal challenge in the course of his duties
 - Meeting all the costs of the coroner service
19. The Chief Coroner for England and Wales has issued guidance to all Coroners and local authorities in the form of a 'Model Coroner Area'. This states that contracts or SLAs should be let on a regular basis for mortuary and pathology services. In accordance with best procurement practice, services being bought should be subject to open competition wherever possible. In these circumstances, open competition will not be possible due to technical reasons. As set out in paragraphs 7 and 8 above, the approach adopted by the Council is in accordance with its legal obligations under the Public Contracts Regulations 2015.

Equalities and Diversity

20. An Equalities Impact Assessment (EIA) has not been completed. This is because when an examination of the body is required to help establish the cause of death, the Coroner must decide in each case what type of examination is required, and has the legal power to order a PM regardless of the protected characteristics. However, a PM is not limited to an invasive

autopsy and may include CT (or MRI) imaging. Where in a particular case there is an established religious tenet that invasive autopsy is to be avoided, and Article 9 of the European Convention of Human Rights is therefore engaged, the Coroner should be guided in making a proportionate decision in line with the decision of the High Court in the case of *R (Rotsztein) v HM Coroner for Inner London North 2015*. Although the current and proposed providers do not provide CT scanning as an alternative to invasive PM, facilities for this are available in other parts of the country if required.

Other Implications:

21. The potential implications for the following council priorities and policy areas have been considered.

Area assessed:	Direct Implications:
Corporate Parenting/Looked After Children	No implications arising from this report.
Safeguarding responsibilities for vulnerable children and adults	No implications arising from this report.
Public Health	No implications arising from this report.
Climate change	No implications arising from this report.
Carbon emissions	No implications arising from this report.

WHAT HAPPENS NEXT:

22. The timetable for implementation is as follows:

Action	Date
Cabinet decision to award (including 'call in' period)	5 April 2017
'Alcatel' Standstill Period	10 Days ending 15 April 2017
Contract Signature	16 April 2017
Contract Commencement Date	16 April 2017

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Consulted:

HM Coroner for Surrey
 Giles Adey, Interim Service Head Coroners

Annexes:

There are no annexes attached to this report.

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