

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

14 JANUARY 2016

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Leader of the Council – Councillor Cook

CORONER'S SERVICE

1. Summary

The purpose of this report is to provide an update regarding the proposed merger of the Teesside and Hartlepool Coroner areas.

An addendum to the business case has been prepared by Middlesbrough as lead authority, which amends some of the recommendations contained in the main business case previously submitted to the Ministry of Justice in September 2014.

Cabinet is asked to consider the report, the addendum to the business case and the recommendations which flow from the revised proposals.

2. Recommendations

It is recommended that:-

1. The senior coroner position should be full-time;
2. The model of coroner support (1FTE senior coroner + 0.8 FTE assistant coroner) is retained;
3. The senior coroner for the new area is appointed via external competition, following MoJ agreement to indemnify the local authorities against the costs of any litigation and compensation (should a scenario arise where compensation is payable) and if no indemnity is forthcoming then the merger is postponed until legislation is in place governing the payment of compensation;
4. It is noted that the MoJ can force a merger, and that if they do so and litigation is brought against the local authorities, that this is dealt with by the Relevant Authority for the new coroner area with any associated costs/compensation being discussed and agreed between the four authorities in accordance with the formula for funding the service;
5. The detail of the support provided to the senior coroner, by either an assistant (or area) coroner, is decided by the Relevant Authority (in liaison with the other

authorities) once the outcome of the senior coroner appointment process is known; and that approval of any

6. Further revisions to the Business Case and its addendum, which do not fundamentally alter the direction proposed are delegated to the Corporate Director of Resources and the Director of HR, Legal and Communications in consultation with the Leader of the Council.

3. Reasons for the Recommendations

To ensure that appropriate decisions are taken regarding the future direction of the Coroner's service, and that the interests of the local authorities and their communities in that respect are satisfactorily protected.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing

a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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SUMMARY

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Cabinet is asked to consider the report, the addendum to the business case and the recommendations which flow from the revised proposals.

RECOMMENDATIONS

It is recommended that:-

1. The senior coroner position should be full-time;
2. The model of coroner support (1FTE senior coroner + 0.8 FTE assistant coroner) is retained;
3. The senior coroner for the new area is appointed via external competition, following MoJ agreement to indemnify the local authorities against the costs of any litigation and compensation (should a scenario arise where compensation is payable) and if no indemnity is forthcoming then the merger is postponed until legislation is in place governing the payment of compensation;
4. It is noted that the MoJ can force a merger, and that if they do so and litigation is brought against the local authorities, that this is dealt with by the Relevant Authority for the new coroner area with any associated costs/compensation being discussed and agreed between the four authorities in accordance with the formula for funding the service;
5. The detail of the support provided to the senior coroner, by either an assistant (or area) coroner, is decided by the Relevant Authority (in liaison with the other authorities) once the outcome of the senior coroner appointment process is known; and that approval of any

6. Further revisions to the Business Case and its addendum, which do not fundamentally alter the direction proposed are delegated to the Corporate Director of Resources and the Director of HR, Legal and Communications in consultation with the Leader of the Council.

DETAIL

Background

1. In September 2014 Middlesbrough, Hartlepool, Redcar and Cleveland and Stockton Councils approved a business case that recommended:-
 - The Teesside and Hartlepool coroners' areas should merge;
 - The Senior Coroner for the merged area should be a 0.8 FTE position;
 - The Senior Coroner for Hartlepool should "slot in " to the position of the Senior Coroner in the new merged area; and
 - The service should be supported by 1 Assistant Coroner (0.8 FTE), with any additional Assistant Coroner support required being provided on an ad hoc basis (estimated at circa 15-20 days per year)
2. The business case was submitted to the MOJ and the MOJ consulted on the proposals, following which they stated that, in line with views expressed by the Chief Coroner, they were unlikely to recommend the merger, unless the Senior Coroner position was full-time and appointed by external competition.
3. Since that time, progress has been made in relation to certain aspects of the business case, and circumstances have changed, such that the business case and its recommendations should be reconsidered.
4. The outcome of this reconsideration is contained in an Addendum to the original business case, which has been prepared by Middlesbrough Council as lead authority. A copy of the Addendum is attached to this report at **Appendix 1**.
5. The improved outcomes identified in the original business case have already been delivered without a formal merger of the two areas. These are as follows:-
 - (a) The timeliness of inquests has improved substantially and this improvement has been maintained throughout 2015;
 - (b) A streamlined service is now offered by both coroner services to key partners; and
 - (c) The savings predicted in the business case have been delivered by streamlining processes within the Teesside Coroner's Service and the commissioning of services.
6. The timeliness of inquests has improved significantly in both the Teesside and Hartlepool Coroner areas. In 2014 the Teesside Coroner's Service dealt with circa 2,300 reported deaths and completed circa 700 inquests. The average time for dealing with inquests, excluding the backlog cases, was seven weeks. This performance has been maintained during 2015.
7. Hartlepool Coroner's service continues to perform well with the average time for inquests in 2014 being three weeks which was the best performance in the country. This excellent achievement is partly attributed to the closure of the hospital and the

consequent reduction in the number of complex cases. In 2014 the Hartlepool Coroner's service dealt with 235 reported deaths and concluded 29 inquests.

8. The main savings predicted in the business case have been delivered. It is possible that some, comparatively minor, additional savings could be achieved via the merger of the two services, relating to the provision of administrative support; however some of these savings could be achieved by further merging the back off support functions without a formal merger of the two areas. There is also the possibility that a merger would assist Hartlepool in offsetting future costs for example should Hartlepool Coroner's Service decide (or be required) to move to an electronic case management system. This additional cost would not be incurred in a merged Coroner Service as Teesside Coroner's Service already has an electronic case management system implemented.
9. Whilst a merged service is unlikely to result in any additional significant savings there would be a realignment of costs. The cost to the Teesside local authorities increasing by between £6,000 and £14,000 per authority and a reduction in costs payable by Hartlepool local authority of circa £26,000.
10. The Business Case was drafted in July 2014. Since that date there have been several key changes, as follows:-
 - (a) A better understanding of the impact on the Coroner's Service of the deprivation of liberty (Cheshire West) judgement;
 - (b) The opportunity to see the coroner support model proposed in the business case in operation (albeit in a slightly different format); and
 - (c) The Chief Coroner's response to the consultation on the original business case and additional guidance issued to Middlesbrough in respect of the merger.

Cheshire West

11. In March 2014 the Supreme Court delivered a ruling (**Cheshire West**) that clarified the definition of "deprivation of liberty"; this has resulted in an increase in the number of cases in which residents are deemed to be "deprived of their liberty". This has impacted directly on the number of deaths reported to the coroner (which is likely to continue to rise) as all deaths of those 'deprived of liberty' should be reported to the coroner and should be subject to an inquest. This increase in workload has resulted in the need for a full time senior coroner position in the Teesside Coroner's Service and this need will continue in a merged service. This increase is now impacting upon the performance of the Coroner's Service and is being addressed by the Senior Coroner in conjunction with Cleveland Police and Middlesbrough as the Relevant Authority.

Coroner Support Model

12. The model of coroner support, 1 FTE senior coroner supported by a dedicated assistant coroner (0.8 FTE, comprising 0.4 FTE for Teesside and 0.4 FTE for Hartlepool) with a small number of additional ad hoc assistant coroner days, has been in operation for over a year and has proved to be efficient and effective.

Chief Coroner's response to the proposed merger

13. The Chief Coroner raised three concerns in response to the MoJ consultation on the business case as follows:-

- (a) The role of Senior Coroner should be full-time
- (b) Support to the Senior Coroner should be provided by 5 ad-hoc assistant coroners; and
- (c) Teesside and Hartlepool should consider whether the appointment to the role in the merged area should be by external competition rather than by slot-in.

(a) Full time appointment

The need for a full-time senior coroner post, due to the increase in workload arising from Cheshire West, is accepted; this is supported by the Chief Coroner's views.

(b) Support to the Senior Coroner

The Chief Coroner's view is that the senior coroner should be supported by 5 assistant coroners all working ad-hoc. This model of coroner support was in operation when performance in the Teesside Coroner's Service was poor and contributed to the poor performance in the area at that time. The new coroner support model is in operation (albeit in a slightly amended format to that originally envisaged) and has been proven to be effective. Consequently it is proposed to retain the proposal for a 0.8 FTE assistant coroner role, described at paragraph 12, with a small number of additional ad-hoc assistant coroner days (if required).

(c) Appointment of the new senior coroner

(i) The Chief Coroner's response to the MoJ consultation stated "*.... in relation to the proposed slotting in of the Senior Coroner for Hartlepool..... the Chief Coroner is of the view that the circumstances in the present case do not necessarily lend themselves to this particular option. The current area of Hartlepool is small, with 340 deaths reported in 2013. The estimated number of deaths in the newly merged area is approximately eight times this amount at 2,738 which would represent a considerable increase in the workload for the existing senior coroner for Hartlepool. Under these circumstances, the Chief Coroner would like to encourage Middlesbrough Council and Hartlepool Borough Council to consider an open competition..... Where, therefore, the remaining senior coroner has had only limited experience as a senior coroner or where the merged area will be considerably larger (in terms of number of reported deaths) than the remaining coroner's current area, the relevant authority may wish to consider the following points:-*

- *The extent of the experience of the remaining senior coroner. Whether that experience is a sufficient guide to their appointing him/her as senior coroner of a much larger coroner area or taking on a very different area profile, for example prisons for the first time.*
- *Whether the public will have sufficient confidence in that person in light of their experience.*
- *The likelihood that a good field of candidates will apply if a competition is held, so that the best candidate for the post can be appointed.*

(ii) The original business case proposed that the Senior Coroner for Hartlepool, Mr Donnelly, would be “slotted in” to the senior coroner role in the new area. The basis for this view was to comply with the Chief Coroner’s guidance note 14 and acceptance at face value, of the MoJ’s position that compensation would be a matter for the Relevant Authority and an (incorrect) view that the new rules governing appointments would apply to the new role, in a slot-in scenario, thus the senior coroner would be required to retire at age 70.

(iii) The Chief Coroner raises valid points in relation to the relative size of the current Teesside and Hartlepool Coroner areas (see table 1), the institutions contained with them (Teesside contains two substantial hospitals and two prisons; Hartlepool does not have these facilities) and the likelihood of attracting the best candidate for the role through open competition.

Table 1 - statistics for the Teesside and Hartlepool coroner areas					
Year	Total	Teesside		Hartlepool	
		Number	Percent	Number	Percent
Reported Deaths					
2010	3,000	2,566	86%	434	14%
2011	3,046	2,659	87%	387	13%
2012	2,971	2,635	89%	336	11%
2013	2,738	2,398	88%	340	12%
2014	2,533	2,298	91%	235	9%
Inquests					
2010	393	315	80%	78	20%
2011	338	292	86%	46	14%
2012	386	350	91%	36	9%
2013	448	394	88%	54	12%
2014	772	693	96%	29	4%

Source: Ministry of Justice Coroner Statistics - <https://www.gov.uk/government/news/new-coroners-data-tool-launched>.

(iv) In addition to the workload, recruitment through open competition would require that the successful candidate be appointed under the terms of the 2009 Act. As such, such an appointment would be subject to a mandatory retirement age of 70. In contrast, any slot-in appointment would be on the basis of the pre-existing appointment, and would not, therefore, be subject to any specified retirement age re-creating the circumstances that allowed the previous problems within the Teesside Coroner’s Service to develop.

- (v) There is a lack of clarity around the position where a Senior Coroner is removed from office as a result of a merger. External legal advice has been sought which details that compensation may not be due, but if it is, it may rest with the MOJ or it may rest with the Relevant Authority. The MoJ position, backed by a different legal opinion, is that compensation, if payable, would be payable by the Relevant Authority. The compensation due for loss of office might be substantial. What is clear is that there are no statutory provisions governing compensation on a merger. The result of this is an element of risk to the Local Authority and the high likelihood of protracted litigation on the matter.
- (vi) The salary of a Senior Coroner is, legislatively, a matter for the Relevant Authority to negotiate with the Senior Coroner with the final arbiter being the Lord Chancellor. An open competition reduces the risk of a challenge to the salary or the success of that challenge. This is particularly important as at present there is national pressure on salaries with a report by Price Waterhouse Cooper suggesting national salary levels of Coroners that would result in a circa £100,000 increase to the Teesside Senior and Assistant Coroner costs.
- (vii) The opportunities and risks associated with each recruitment option are summarised below in the table 2.

Table 2 - Opportunities and Risks associated with options available	
Opportunities	Risks
Appointment to new role via slot-in of Senior Coroner for Hartlepool	
Avoids uncertainty regarding possibility of compensation being payable and avoids risk of litigation.	<p>Previous legislative rules will apply rather than those contained in the 2009 Coroners and Justice Act, specifically no requirement to retire at 70. The risk being that the issues which previously faced the Teesside Coroner's Service which were extremely difficult to address, could re-occur.</p> <p>High risk of successful challenge regarding salary offered and potential cost increase in salary costs (circa £100,000) per annum.</p> <p>Limited / no experience of managing a coroner's service of this size with:</p> <ul style="list-style-type: none"> • circa 2,500 reported deaths and circa 500 inquests per year (based on 2015 numbers); • multi-agency support team associated with above workload; and • prison deaths. <p>Cannot demonstrate that the best candidate for the job secures the role and consequently may not secure the best outcome for the service and the residents of the area.</p> <p>Does not take into account the Chief Coroner's specific guidance, issued to Teesside and Hartlepool.</p>
Open Competition	
<p>Market can be tested to ensure the best person for the job</p> <p>Moves the jurisdiction to the new rules as per the 2009 Coroners and Justice Act; Post holder will be required to retire at 70</p> <p>Greater certainty regarding level of remuneration (avoiding increased costs of circa £100,000)</p>	<p>Risk of litigation associated with decision not to 'slot-in' and / or compensation payable. The main risk is that litigation will occur rather than its likelihood of success which is deemed by external Leading Counsel to be low. To date every merger of Coroner Areas has occurred with a 'slot-in' of the remaining coroner.</p>

Takes into account the Chief Coroner's specific guidance issued regarding the circumstances in this area.	
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(vii) Taking the above risks and opportunities into account, should a merger go ahead, an external appointment is now the recommended option.

Further Consultation

14. Initial consultation has been undertaken on Middlesbrough Council's addendum to the Business Case with the other local authorities, Cleveland Police, the Acting Senior Coroner for Teesside and the Senior Coroner for Hartlepool.

Local Authority views

15. Middlesbrough, Stockton and Redcar and Cleveland local authorities are of the view that it is essential that the conditions that enabled the previous issues to occur within the Teesside Coroner's Service are addressed and the area is moved to a new legislative footing. This can only be done via an external competition. Therefore it is being recommended that the addendum to the Business Case is supported. Hartlepool local authority have expressed the view that the current Senior Coroner for Hartlepool has provided a good service to Hartlepool and that he should be 'slotted' into the new role in the merged area and do not support an external appointment process.

Cleveland Police

16. Cleveland Police have stated that the Councils must ensure that there is no reoccurrence of the issues that previously beset the Teesside Coroner's Service, stating " ...we are keen to see the appointment of a suitable senior coroner who can sustain the improvements and further develop the service provided to local communities". They also expressed the view that regardless of the appointment route taken, the processes between the two coroner areas must remain aligned.

Acting Senior Coroner for Teesside

17. The response received supports:
- a full time Senior Coroner role;
 - a 0.8 Full Time Equivalent Assistant Coroner support model;
 - an external advert for the Senior Coroner; and
 - a merger, but recognises the legislative issues and states that if a merger is not likely to occur then an external appointment to the permanent Senior Coroner role for the Teesside service should occur as soon as possible.

Senior Coroner for Hartlepool

18. The summarised views from the Senior Coroner for Hartlepool are:
- a full time Senior Coroner role is supported;

- a merger is only supported if he is slotted into the role of Senior Coroner in the new area and if not a merger is not supported; and
- he has the necessary skills for the role and the Chief Coroner's argument is "very weak" therefore a slot-in should be the approved way forward.

Commentary on the responses to the consultation

19. It is accepted that regardless of whether or not a merger goes ahead the back office support from the two services should be further aligned. If the merger does not go ahead key partners will continue to be offered one streamlined service.
20. An external advert would ensure that the best person for the area is appointed to the role; it may be that this is the current Senior Coroner for Hartlepool, the Acting Senior Coroner for Teesside or it could be another applicant entirely. However, the external advert would provide an opportunity for applicants to demonstrate that they have the skills and experience required for the role.
21. The Chief Coroner's concerns, in respect to differences between the areas, have been assessed and are considered to be valid.

Next Steps

22. The addendum to the business case will be taken through the relevant decision-making processes of each authority.
23. The Addendum to the business case and the formal decisions from the relevant local authorities will be forwarded to the MoJ.
24. The MoJ are responsible for deciding whether or not to progress a merger. The local authorities cannot progress any course of action until the MoJ confirm the actions they intend to take.
25. A decision not to merge would result in the Teesside Coroner's Service advertising for a Senior Coroner. This process is governed by the Chief Coroner's Guidance Note 6 and could, subject to timely responses from the MoJ and the Chief Coroner's office, be concluded within three months.

FINANCIAL AND LEGAL IMPLICATIONS

Financial

26. The financial savings outlined in the original business case have been delivered. Additional, minor, savings may be possible from a merged service however these could be delivered by further merging back-office administrative support.

Legal

27. The main legal risk is that litigation will be brought against the authorities regarding the external competition for the post in the merged area. Middlesbrough considered this to be a high risk as this merger would be the first merger where a slot-in did not occur. There are no legal implications if a merger does not go ahead.

RISK ASSESSMENT

28. Option 1 (not recommended) – This would involve a response to the MoJ stating that the four local authorities wish to retain all aspects of the original business case without amendment. This is not recommended as it does not address the changes that have occurred since the business case was submitted, fails to consider the more detailed understanding of the risks associated with ‘slot-in’ of the remaining Senior Coroner and does not adequately address the issues raised during the MoJ’s consultation.
29. Option 2 (not recommended) – This would be to accept all the changes proposed by the Chief Coroner in his response to the MoJ consultation. It is not considered that this would meet the needs of the area.
30. Option 3 (Recommended) – This is to approve the addendum to the business case which reflects the changes that have occurred since it was submitted in September 2014. This provides the greatest likelihood of securing the best outcome for the area.

COUNCIL PLAN IMPLICATIONS

31. Organisational and operational effectiveness.

EQUALITY IMPACT ASSESSMENT

32. Middlesbrough, as lead authority, has completed an impact assessment as regards the whole of the Coroners’ areas, and the assessment demonstrates that the decisions proposed will have no adverse impact. A copy of the assessment is attached at **Appendix 2**

CONSULTATION

33. As detailed in the report.

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<u>Background Papers:</u>	None
<u>Ward(s) and Ward Councillors:</u>	Not ward specific
<u>Property Implications:</u>	None