

**ADDENDUM TO
BUSINESS CASE FOR MERGING THE
TEESSIDE AND HARTLEPOOL
CORONER AREAS**

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CONTENTS

Executive summary and recommendations	3
Background	5
Progress made against the original business case	6
Key changes since the original business case was submitted	9
Impact of key changes on the business case	10
Conclusion and recommendations	17

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Summary

1. A business case supporting the merger of the Teesside and Hartlepool Coroner areas was submitted to the Ministry of Justice (MoJ) in September 2014. The MoJ consulted on this document in February 2015 and asked the relevant authority, in consultation with the other local authorities, to respond to the outcome of the consultation.
2. There have also been several key changes to the wider context, since the original business case was drafted in July 2014, which mean that the recommendations in the business case should be reassessed.
3. The improved outcomes identified in the original business case have been delivered:
 - the timeliness of inquests has improved substantially and this improvement has been maintained throughout 2015;
 - the majority of the savings predicted have been delivered;
 - a streamlined service is now offered to partners by both coroner services; and
 - police support continues to be provided to both services from one location; and
 - accessibility to coroner services continue to be provided locally from Middlesbrough and Hartlepool, with a website, for the Teesside Service, being established to further improve accessibility.
4. There has been a significant increase in workload resulting from the Cheshire West Judgement; consequently the Teesside Coroner's Service now requires a full-time senior coroner; this would also be required in the new merged area. Therefore the previously identified saving of £25,000, on coroner salary / fees, is unlikely to be achieved.
5. There is a new risk which is that pressure will be applied to increase the senior coroner's salary in line with the recommendations contained in a national report prepared by Price Waterhouse Cooper. This report recommends that the national rates for coroner pay are as follows: senior coroners to be paid £135,000 and assistant coroners £104,000 per annum. However, in legislation negotiation of fees is a local issue for agreement between the relevant authority and the coroner for the area, although the ultimate decision-maker, if agreement cannot be reached, is the Lord Chancellor.
6. It is possible that some additional slight improvements in the efficiency of both services and their resilience may be possible by merging the two areas. However, the main service improvements, performance improvements and costs savings have already been achieved by introducing new streamlined processes and commissioning of services within the Teesside Coroner's Service.
7. The model of coroner support, 1 FTE senior coroner supported by a dedicated assistant coroner with a small number of additional ad hoc assistant coroner days, has proved to be efficient and effective.
8. The risks and opportunities associated with the two options for the appointment of a senior coroner for the new area have been given further consideration, and Leading Counsel's

opinion sought. There are risks associated with both options; however, on balance an external competition provides the greater likelihood of securing the best outcome for the area with mitigation of the main risk (compensation), should this risk arise, being addressed via the option of an assistant (or an area) coroner role.

9. Hartlepool Council is the Relevant Authority for the Hartlepool Coroner's Service. Hartlepool Council have stated that do not support an external advert rather that the Senior Coroner for Hartlepool should be slotted into the Senior Coroner role in the new merged area. Consequently there is no longer an agreed business case in respect of the appointment process for the new role.
10. The lack of legislative certainty regarding compensation for a senior coroner who loses offices as a result of a merger needs addressing and this can only be done by the MoJ. Consequently the MoJ were asked to indemnify local authorities against any costs associated with litigation and compensation for loss of office (should this be payable). The MoJ have stated that an indemnity will not be possible. Therefore the recommendation is to postpone the merger until the appropriate legislation is in place to enable this risk to be accurately assessed.

Recommendations

11. It is therefore recommended that:

- the senior coroner position should be full-time;
- that the model of coroner support (1 FTE senior coroner + 0.8 FTE assistant coroner is retained);
- that the senior coroner for the new area is appointed via external competition, following MoJ agreement to indemnify the local authorities against the costs of litigation and compensation (should a scenario arise where compensation is payable); if no indemnity is forthcoming then it is recommended that the merger is postponed until legislation is in place governing the payment of compensation;
- if the MoJ decide a merger should occur without the above occurring; and a scenario arises whereby a claim for compensation 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 four authorities in accordance with the formula for funding the service; and
- that the detail of the support provided to the senior coroner, by either an assistant (or area) coroner, is to be decided by the Relevant Authority (in liaison with the other authorities) once the outcome of the senior coroner appointment process is known.
- further revisions to the Business Case and its addendum, which do not fundamentally alter the direction set, are delegated to the Assistant Director – Organisation and Governance.

BACKGROUND

12. On 30th April 2014 the Senior Coroner for Teesside, Mr Michael Sheffield, retired. In line with Ministry of Justice guidance; Middlesbrough Council liaised with all relevant stakeholder and drafted a business case, approved by all four local authorities, which supports the merger of the Teesside and Hartlepool Coroner areas.
13. The business case was submitted to the Ministry of Justice on 9th September 2015. The Ministry of Justice raised several queries with Middlesbrough between September 2014 and January 2015.
14. In February 2015, the Ministry of Justice undertook formal consultation on the business case. There were 18 responses to this consultation; all were in support of a merger but the Chief Coroner's response included some concerns regarding the details of the proposals in the business case. The Ministry of Justice shared those concerns.
15. March / April 2015 - Following discussions with the Ministry of Justice it was accepted that progress on the merger would not be possible until after the national and local elections. The Ministry of Justice's stated position being: "...we do not feel we can recommend a merger to ministers in the form proposed given the Chief Coroner's views on the desirability of an open competition and full-time position...."
16. May 2015, national and local elections resulted in changes in the political make-up at councils within the Teesside and Hartlepool Coroner's areas; within Middlesbrough a new mayor of Middlesbrough was elected.
17. June to October 2015 informal discussions between the local authorities, Cleveland Police, the Acting Senior Coroner for Teesside and the Senior Coroner for Hartlepool.
18. October 2015 – addendum to the business case drafted, which considers the responses to consultation and wider changes that have occurred, for approval by the four local authorities; prior to submission to the Ministry of Justice.

PROGRESS MADE AGAINST THE ORIGINAL BUSINESS CASE

19. The original business case was drafted in July 2014; since that date there has been significant progress in delivering the benefits outlined in the business case without a merger of the Teesside and Hartlepool Coroner areas.
20. The benefits outlined in the original business case were assessed against the key criteria as follows:
- Improved outcomes for customers; measured by:
 - timeliness of inquests
 - accessibility of the service
 - cost effectiveness
 - Streamlined processes for partners
 - Responsiveness to future demand.

Improved outcomes for customers

Timeliness of inquests

21. The historic under-performance issues previously associated with the Teesside Coroner's service have been successfully addressed. The backlog of cases, which once stood at over 400, have all been concluded. The service now runs with between 70 to 95 open cases, as is appropriate for a service of this size. The average time taken to complete inquests in 2014 (excluding backlog cases) was circa seven weeks which was amongst the best in the country. Including backlog cases it was 33 weeks which was a significant improvement on the previous year which had an average time of 50 weeks. In 2014 the Teesside Coroner's service dealt with 2,298 reported deaths and concluded circa 700 inquests.
22. 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.

Accessibility

23. The Teesside and Hartlepool Coroner's services are both supported by officers from Cleveland Police who are based in Middlesbrough Town Hall, with Hartlepool also having an office in Hartlepool. The physical accessibility of the service remains unchanged. However the establishment of a Teesside Coroner Service website with information about inquests has improved access to information for residents.

Cost effectiveness

24. The savings predicted in the original business case and progress against them is shown in table 1. The expected savings have been delivered by introducing streamlined processes, no other, significant savings, are likely to occur as a result of the areas merging. Although a merger may result in cost avoidance by Hartlepool e.g. the Teesside Coroner's Service utilises an electronic case management system in a merged area this could also be utilised by Hartlepool thus avoiding costs to Hartlepool

Coroner's Service associated with buying and maintaining an electronic case management system.

Area for saving	Predicted saving	Update
Efficiencies arising from the procurement of undertakers circa	£30,000	Overachieved £65,000 saving
Efficiencies arising from the implementation of the new operating model due to fewer inquests and post-mortems, a higher number of documentary only and straight through inquests and greater use of discontinuance	£160,000*	New model implemented and savings achieved*.
Reduction in administration costs arising from merger	£15,000	Not achieved. Coroner time savings no longer achievable due to increase in workload arising from the Cheshire West judgement.
Reduction in coroner payments arising from the new coroner model which the merger will facilitate	£25,000	
Total	£230,000	£225,000 achieved*

* The savings achieved have been offset by an increase in the number of reported deaths and inquests due to a change in legislation (Cheshire West ruling by the Supreme Court) this is explained in more detail later in the report and also an increase in hospital based costs e.g. mortuary services and toxicology investigations and reports.

25. The cost of the Teesside and Hartlepool Coroner services, for 2013/14, 2014/15 are provided in Table 2. This shows the significant increase in costs to the Teesside Coroner's service, in 2014/15 which was a direct consequence of addressing the backlog of over 400 cases. The budget set for 2015/16 (see Table 2) is based on that required for the new streamlined operating model and the predicted workload for 2015/16.

	2013/14	2014/15⁽¹⁾	2015/16 (budget)	Difference
Teesside	£962,488	£1,066,574	£890,300	-£176,274
Hartlepool	£182,000	£208,000 ⁽²⁾	£208,000	-
Total	£1,144,488	1,274,574	£1,098,300	-£176,274

(1) 2014/15 budget figures for Teesside are skewed due to the backlog of over 400 cases dealt with during this financial year.

(2) Comparison is actual spend 2014/15 and predicted 2015/16 spend as budget set included savings expected from the merger which did not occur.

26. The cost to each authority in 2014/15 and 2015/16 is shown in Tables 3 and Table 4. The impact on each authority of the costs of the merged service is shown in Table 5. The total cost of the merged service is predicted to remain the same as no further significant savings are expected as a result of the merger; although there may be some minor administrative savings. The costs however are redistributed across the authorities with the costs to the three authorities within the Teesside Coroner's area increasing and the costs to Hartlepool decreasing.

2014/15	Budget contribution	Population Mid-2013	Cost
Middlesbrough	29.74%	138,744	£317,199
Redcar and Cleveland	29.05%	134,998	£309,840
Stockton	41.21%	192,406	£439,535
Total	100%	466,148	£1,066,574
Hartlepool	100%	91,200	£ 208,000

2015/16	Budget contribution	Population (Mid-2014)	Cost
Middlesbrough	29.74%	139,119	£264,775
Redcar and Cleveland	29.05%	135,042	£258,632
Stockton	41.21%	194,119	£366,893
Total	100%	466,148	£890,300
Hartlepool*	100%	92,590	£208,000*

* The budgeted cost for Hartlepool included the reduction expected from the merger therefore the budgeted figure + the saving dependent upon the merger has been included in the table.

2015/16	Budget contribution	Population (mid-2014)	Cost	Difference
Middlesbrough	24.90%	139,119	£273,463	+£8,688
Redcar and Cleveland	24.17%	135,042	£265,449	+£6,817
Stockton	34.74%	194,119	£381,576	+£14,683
Hartlepool	16.57%	92,590	£182,002	-£25,998
Total	100%*	558,738	£1,098,300*	

*Due to rounding figures are not exact budget contribution total = 100.38%; the 0.38% equating to the £4,873 difference in the cost total

Streamlined processes for partners and responsiveness to future demand

27. The new operating model introduced into the Teesside Coroner's Service has streamlined processes and is now similar to that operated by the Hartlepool Coroner's Service. This has resulted in a more streamlined service to partners, further slight improvements may be possible as a consequence of the merger.
28. Future demand is likely to increase as demonstrated by the impact of the Cheshire West (Deprivation of Liberty) judgement. The increase of the senior coroner role to

full-time will help mitigate this increase. The impact of the Cheshire West Judgement will need to be kept under review if the number of inquests continues to rise this will impact upon the level of (all) resources required i.e. council, police and coroner.

KEY CHANGES SINCE THE BUSINESS CASE WAS SUBMITTED

29. The original 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 Cheshire West (deprivation of liberty) judgement;
- b. the opportunity to see the coroner support model proposed in the business case in operation (albeit in a slightly different format);
- 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; and
- d. changes to the political administrations at some councils.

IMPACT OF CHANGES ON THE BUSINESS CASE

Impact of the Cheshire West Judgement

30. In March 2014 the Supreme Court handed down a ruling (**Cheshire West**) that clarified the definition of “deprivation of liberty”; this 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.
31. Consequently in the calendar year to date there has been a rise in reported deaths (an additional 137 in the period January 2015 – September 2015) and 361 inquests during this nine-month period which is in excess of the number undertaken during 2014. It is estimated that in 2015 there will be circa 500 inquests compared to 296 (excluding backlog cases) undertaken in 2014.
32. The impact of the Cheshire West judgement is likely to see both the number of reported deaths and the number of inquests rise throughout 2015 and 2016 before the rate of increase reduces. The level of reported deaths and inquests will remain at a much higher level than was the previous norm.
33. This significant 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. The number of reported deaths and inquests undertaken by the Hartlepool Coroner’s Service has reduced and may continue to do so as a result of the closure of the hospital, this has also resulted in a reduction in the number of complex cases dealt with by the Hartlepool Coroner’s Service.

Opportunity to see the new coroner support model in operation

34. A new, streamlined business model, which complies with the Coroners and Justice Act 2009 has been in operation, in the Teesside Coroner’s Service, for over a year. This has resulted in a significant improvement in the timeliness of inquests. In 2014 inquests (excluding backlog cases) were concluded, on average, in 7 weeks. This performance has continued throughout 2015 indicating that the new business model is working well.
35. The new model includes: more inquests held as ‘straight through’ inquests i.e. opened and concluded at the same time; more inquests undertaken based on the paperwork only, reducing the need to call witnesses, there has also been a reduction in the number of jury inquests. This new streamlined business model is working very well, and savings have been delivered in line with those predicted. However, the savings have been offset by the increase in workload attributable to the Cheshire West judgement.
36. The model of coroner support in operation is: 1.4 FTE for Teesside (split 1 FTE senior coroner and 0.4 FTE assistant coroner) this has worked well. The Senior Coroner for Hartlepool continues to deliver the service to Hartlepool with circa 0.4 FTE. Overall, this gives a total of 1.8 FTE Coroner support for the Teesside and Hartlepool Coroner areas, supplemented with a small number of ad hoc assistant coroner days.
37. The opportunity to see the coroner support model in operation has demonstrated that having one full-time senior coroner overseeing the service and liaising with key partners

has worked well. The full-time position enables adequate time for liaison with key stakeholders and addressing service improvement issues in addition to ensuring that the core coroner work is delivered. This combined with the additional workload generated by Cheshire West supports an amendment to the business case to increase the senior coroner's position to full time from the 0.8 FTE originally proposed.

The Chief Coroner's response to the consultation and additional guidance

38. The Chief Coroner has responded to the consultation on the business case and has issued additional guidance to Middlesbrough in respect of the merger. The Chief Coroner's consultation response states:

“Proposed coroner model

The Chief Coroner does not support the proposal to appoint a 0.8 FTE senior coroner to the new coroner area. As acknowledged in the business case put forward by the local authorities, the Chief Coroner is of the view that there should be a reduction in the number of part-time coroner areas. He considers that the combined number of reported deaths for Teesside and Hartlepool, 2,738 in 2013, requires a full-time senior coroner to enable proper leadership of the coroner service.

The size of the merged area would not normally require an area coroner. Instead, the senior coroner should be supported sufficiently by the five assistant coroners, all of whom should be paid a fee and offered a minimum of 15 sitting days per year. The issue of whether there needs to be an area coroner could, however, be left open for discussion.

If an area coroner is appointed that person will become the deputy to the senior coroner. Otherwise, the new senior coroner and the relevant authority should agree which of the assistant coroners will act as deputy when the senior coroner is unavailable or incapacitated. However, the deputy should not be used to ensure that there is a full-time service where there is a part-time senior coroner. Where a full-time service is required, a full-time senior coroner should be appointed.

Appointment of the new senior coroner

The Chief Coroner notes the proposal to appoint the present senior coroner for Hartlepool, Malcolm Donnelly, as senior coroner for the new coroner area upon its creation. Although it is open to the relevant authority to appoint a senior coroner from one of the old coroner areas to the newly merged coroner area in accordance with the Chief Coroner's Guidance No 14: Mergers of Coroner Areas, 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 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 in line with ... the Additional Note relevant to this topic which is attached.”

39. The relevant paragraphs of the Additional Note state:

“The Chief Coroner advised that Option 1 should usually be the preferred option ... The word ‘usually’ means that Option 1 will not always be the right option. As the Chief Coroner has stated ‘the relevant provisions of the 2009 Act do not provide automatic inheritance of the newly formed coroner area for the remaining coroner (where there is only one remaining)’ (paragraph 25). In some circumstances, therefore, Option 2 may be the better option. The Chief Coroner has made it clear that it is a matter for the relevant authority which option to choose ... 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 numbers 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 the 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.” - His Honour Judge Peter Thornton QC; Chief Coroner*

The Ministry of Justice supported the view of the Chief Coroner, advising the Relevant Authority, in April 215, that:

- *“As you are aware we are very keen to progress a merger of the Teesside and Hartlepool Coroner areas. However, we do not feel that we can recommend to Ministers a merger in the form that has been proposed in the business case, given the Chief Coroners views on the desirability of an open competition in this instance and the proposed 0.8FTE Senior Coroner post...” - MoJ*

Consideration of the issues raised by the Chief Coroner during consultation

40. The need for a full-time senior coroner post, due to the increase in workload, is accepted; this is further supported by the Chief Coroner’s views.
41. The Chief Coroner’s view is that the senior coroner should be supported by the 5 assistant coroner’s all working ad-hoc. This model of coroner support was in operation when performance in the Teesside Coroner’s Service was poor. This model 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 proven exceptionally effective. Consequently it is proposed to retain the proposal for 0.8 FTE assistant coroner support with a small number of additional ad-hoc assistant coroner days (if required).
42. 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:
- a. to comply with the Chief Coroner’s guidance note 14;
 - b. due to the acceptance, at face value, of the Ministry of Justice’s position that compensation would be a matter for the Relevant Authority; and

- c. (incorrect) information 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.

43. The Chief Coroner raises valid points in relation to the relative size of the current Teesside and Hartlepool Coroner areas (the former dealing with significantly more reported deaths than the latter), the institutions contained within them (the former contains two substantial hospitals and two prisons as opposed to no such facilities in the latter), and the likelihood of attracting the best candidate for the role through open competition (not excluding the possibility that either the Acting Senior Coroner for Teesside or the Senior Coroner for Hartlepool might be that 'best candidate').

44. An analysis of the workload of the Teesside and Hartlepool Coroner areas is provided in Table 6. This clearly illustrates the point being made by the Chief Coroner regarding size of workload.

Table 6 - Caseload statistics for the Teesside and Hartlepool Coroner areas

Total deaths reported					
Year	Total	Teesside		Hartlepool	
		Number	Percent	Number	Percent
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					
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>.

45. 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. Open competition would, therefore, bring a degree of certainty to the senior coroner's position, which would ensure that the previous situation could not recur. Given the serious problems which occurred in the Teesside Coroner's Service for circa 15 years prior to the retirement of the previous Senior Coroner, this is a situation that the Teesside Coroner's Service should ensure does not happen again.

46. The Coroner's and Justice Act 2009 s.15 states that the salary for the senior coroner is to be agreed by the senior coroner and the relevant authority but that if agreement cannot be reached then the matter may be referred to the Lord Chancellor for determination. There is currently significant pressure from the Coroner's Society for standardised salaries for coroners these are suggested at a level far in excess of that previously recommended by the LGA and that paid by Teesside and Hartlepool local authorities. An open competition, by its nature, represents an offer and acceptance of

salary and therefore significantly mitigates the risk of disagreement, again bringing greater certainty to the costs of the service. A slot-in brings the risk of challenge to the salary, and on the basis of inequity of the parties bargaining power has a far greater likelihood of success which could result in increased salary costs in respect of the senior coroner and assistant coroners' fees which could amount to an additional £100,000 per year (source PWC).

47. However, it should be noted that there is a potential compensation issue for a current Senior Coroner who loses that role. Paragraph 36 of Guidance Note 14 states: *“As a result of the process of merger, in particular in relation to option (2), one or more senior coroners from the old coroner areas may no longer hold the position of senior coroner. It is arguable that the displaced senior coroner (or senior coroners) is entitled to remain a salaried coroner (with no reduction in salary) but not entitled as of right to continue to hold the office of senior coroner. Be that as it may one of the alternatives in the process is to offer a displaced senior coroner from an old area a new position as area coroner in an enlarged merged area.”*

48. Clarification was sought from the Ministry of Justice on the compensation issue in April 2015. The relevant authority requested sight of any legal authority indicating that compensation was a matter for the local authorities. The Ministry of Justice responded advising that:

‘Unfortunately the legal advice we received on the Coroners and Justice Act does not deal specifically with who would be liable to meet a compensation claim. It does, however, acknowledge that such a claim is a significant risk and notes that there is no statutory compensation mechanism to deal with this in the 2009 Act. As a result the departments view has been that compensation would be a matter for the local authority as ultimately it is the local authority’s decision as to whether to run an open competition..... Given the uncertainty and potential financial risks surrounding an open competition, Ministers may be willing to approve a merger without an open competition... However, we will need to include in our advice the Councils consideration and response to the Chief Coroners point.’ - MoJ

49. It became evident at this point that the Ministry of Justice had altered their position due to the uncertainty and potential financial implications of open competition. Open competition was a matter for the local authorities and a merger may be approved on that basis and on consideration and response to the Chief Coroners concerns.

50. The Ministry of Justice have now shared selected extracts of the legal opinion that they sought on this matter. This suggests that responsibility for payment may sit with the Relevant Authority.

51. The 2009 Coroners and Justice Act, which provide the statutory basis for mergers, is silent on this issue; whilst this could be an oversight it is perhaps more likely that the legislation is silent as it was envisaged that no compensation for loss of office was payable.

52. When Local Government reorganisation occurred in 1965 and 1972 the legislation included provision for compensation of a coroner for loss of office. In local government reorganisation payment fell to the local authorities. However, the driver to merge coroner areas is the Coroner and Justice Act 2009 which states that the number of coroner areas should reduce; logically this would mean that compensation should be a matter for the MoJ. In addition the ultimate decision-makers with respect to whether or

not a merger occurs is the MoJ who either recommend or don't recommend this action to ministers for approval. A fundamental principle regarding compensation is that it is payable by the decision-maker. The decision of whether or not to slot-in a displaced coroner is merely a mitigating action to the decision taken by the MoJ to merge the areas.

53. The previous statutory provisions, which do not apply in this scenario, allowed for compensation to be paid however this was only where the senior coroner did not seek to mitigate his loss hence it is probable that this risk could be mitigated by offering an assistant (or area) coroner role. It is clear that similar clarification on whether compensation is payable and if so statutory provision detailing what compensation is due, is required. A request will be made to the Ministry of Justice asking that this is addressed.
54. Middlesbrough Council sought external legal advice on this matter; Leading Counsel's advice in relation to compensation suggests that compensation may not, in any event, be payable, as there are no provisions in the Coroners and Justice Act 2009 for such compensation; and if, contrary to that position, compensation is payable, the liability for such payment would fall to the organisation which takes the action that abolishes the office of Senior Coroner for Hartlepool, i.e. the MoJ. In such circumstances, and given that coroners are not employees of the authorities, there might remain a relationship akin to a contract for services, which would need to be lawfully terminated; however, Leading Counsel's view is that a court would be likely to conclude that there is an implied term entitling the authorities to terminate on reasonable notice in circumstances where the office is abolished.
55. Both options for appointment of a senior coroner to the new area have opportunities and risks associated with them; these are summarised in the Table 7.

Table 7 - Opportunities and Risks associated with options available	
Opportunities	Risks
Slot-in	
Avoids uncertainty regarding compensation payable.	<p>Previous legislative rules will apply rather than those contained in the 2009 Coroner's 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.</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 2014 and 015 numbers) • multi-agency support team associated with above workload • 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>
<p>Open Competition</p>	
<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 Coroner's and Justice Act; Post holder will be required to retire at 70</p> <p>Greater certainty regarding level of remuneration, with reduced risk that this will be successfully challenged</p> <p>Meets Chief Coroner's specific guidance issued regarding the circumstances in this area.</p>	<p>Compensation issue - High level of uncertainty, as the matter is not governed by the Coroners and Justice Act 2009 and there are no associated compensation regulations detailing:</p> <ul style="list-style-type: none"> • If compensation is due • Who is liable for compensation • How compensation would be calculated • Whether payment of compensation would be mitigated by an offer of a role on similar terms. <p>Leading Counsel's view - Compensation for loss of office may not be payable at all and if it is then it is a matter for the MoJ. Hartlepool Council may be liable for ending a contract for services if adequate notice is provided there may be no financial liability or liability is likely to amount to circa 3 months' salary. MoJ legal opinion is that the Relevant Authority may be liable to pay compensation.</p> <p>There is a high risk of becoming embroiled in litigation which occurs due to this being the first merger in which a displaced coroner is not 'slotted in' to the new role. Regardless of the outcome of the litigation this is likely to impact upon council and coroner resources.</p>

56. In light of the above, it is considered that, in order to secure the widest possible field of candidates and thereby be in a position to appoint the best candidate possible, recruitment through external advertisement is now the preferred option. This also provides greater certainty in respect of succession planning, vacation of office at age 70 and the terms of office including salary agreed. Whilst ensuring that the public receive the best service possible and ensuring that there is no reoccurrence of the issues that beset the Teesside Coroner's Service previously.

57. It is proposed that the detail of the support provided to the senior coroner by either an assistant (or area) coroner is to be decided by the relevant authority (in liaison with the

other authorities) once the outcome of the senior coroner appointment process is known.

58. It is also proposed the MoJ are asked to indemnify the local authorities against the risk of compensation. If the MoJ are unwilling to indemnify the local authorities then it is proposed that the merger is postponed until appropriate legislation is introduced to govern the compensation issue and allow an accurate assessment of the financial risk.
59. The main risk is that litigation will occur as this will be the first merger, nationally, where a sitting senior coroner is not 'slotted-in' to the new role. Consequently it is possible that the Coroner's Society may decide to challenge this decision to provide clarity regarding the position in respect of senior coroners in areas that may merge in the future.
60. The MoJ have the legislative authority to merge the authorities without the agreement of all (or any) parties and they could choose to do so although to date this has not occurred. Should this occur it fundamentally weakens the MoJ argument that the decision making organisation is the Relevant Authority as it is the act of merger which results in the removal of the senior coroner offices in respect of both Teesside and Hartlepool and which results in the displacement of the Senior Coroner for Hartlepool.
61. If, the decision is taken by the MoJ to insist on a merger without the above in place then it is recommended that should a claim for compensation be brought against the local authorities that this is dealt with by the Relevant Authority for the new coroner area and any associated costs / compensation is discussed and agreed between the four authorities in accordance with the formula for funding the service.

Changes in political makeup of councils

62. Following the elections on 7 May 2015, the political composition of all four of the local authorities has changed, including the election of a new Mayor of Middlesbrough Council.
63. In such circumstances, it is perhaps understandable that each new administration will wish to consider the position afresh (or, at least, in light of new information) and satisfy itself as to the most appropriate way forward. Given the Chief Coroner's consultation response, and the subsequent discussions with the Ministry of Justice, it is appropriate that this Addendum be the subject of a further formal resolution from each authority.

CONCLUSION AND RECOMMENDATIONS

64. Having considered the progress made against the original business case, the wider contextual changes and the Chief Coroner's view it is evident that the proposals in the original business case should be reassessed.
65. There is an obligation to ensure that the best person for the role is appointed to safeguard the service improvements that have occurred to date, and secure performance in the long term. It is imperative that advantage is taken of the opportunity to move the new coroner area to the new legislative arrangements thus ensuring, as far as is possible, that the previous issues associated with the Teesside Coroner's Service do not reoccur in the new, merged, area.
66. In light of the: progress made in delivering key actions in the original Business Case, the wider contextual changes and the Chief Coroner's responses to consultation; it is recommended that:
- the senior coroner position should be full-time;
 - that the model of coroner support (1 FTE senior coroner + 0.8 FTE assistant coroner is retained);
 - that the senior coroner for the new area is appointed via external competition, following MoJ agreement to indemnify the local authorities against the costs of litigation and compensation (should a scenario arise where compensation is payable); if no indemnity is forthcoming then it is recommended that the merger is postponed until legislation is in place governing the payment of compensation;
 - if the MoJ decide a merger should occur without the above occurring; and a scenario arises whereby a claim for compensation 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 four authorities in accordance with the formula for funding the service; and
 - that the detail of the support provided to the senior coroner, by either an assistant (or area) coroner, is to be decided by the Relevant Authority (in liaison with the other authorities) once the outcome of the senior coroner appointment process is known.