

BIRMINGHAM CITY COUNCIL

CABINET MEMBER AND CHIEF OFFICER

FRIDAY, 10 DECEMBER 2021 AT 00:00 HOURS
IN CABINET MEMBERS OFFICE, COUNCIL HOUSE, VICTORIA
SQUARE, BIRMINGHAM, B1 1BB

A G E N D A

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1 POST-MORTEM CHARGES BY PATHOLOGISTS

Report of Managing Director - City Operations

Birmingham City Council

Report to Cabinet Member Social Inclusion, Community Safety and Equalities

10th December 2021



Subject: Post-mortem Charges by Pathologists

Report of: Rob James, Managing Director - City Operations

Relevant Cabinet Member: Councillor John Cotton, Cabinet Member, Social Inclusion, Community Safety and Equalities

Relevant O &S Chair(s): Cllr Carl Rice - Co-ordinating Committee

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 This report advises the Cabinet Member of the increased costs in undertaking a post-mortem examination leading to a budget pressure of 160k per annum.
- 1.2 This report is asking for approval to implement this change accepting that this will result in an overspend of existing budget in 2021/22 in the region of £54k for the

remaining 4 months of the financial year until the budget pressure has been accepted and finances made available. The annual pressure of £160k has been included in Medium Term Financial Plan (MTFP) budget discussions.

2 Recommendations

That the Cabinet Member agrees the appropriate post-mortem fee is paid for the work undertaken by each pathologist.

3 Background

- 3.1 The Council is legally required to assist the Birmingham and Solihull Coroner to determine the cause of death where the GP is unable to issue a cause of death certificate. As part of this process the Council has a public mortuary for the coronial area where post-mortems are undertaken.
- 3.2 The lead person during a post-mortem is a pathologist, who is a qualified doctor generally employed in the NHS and undertaking this work as an independent person. The cost of an examination is laid down in The Coroners Allowances, Fees and Expenses Regulations 2013. This stipulates the fees are as follows:

Fee for making a post-mortem examination

6. A suitable practitioner is to be paid a fee of—

For making a post-mortem examination and reporting the result to the coroner	£96.80
For making a post-mortem examination involving additional skills and reporting the result to the coroner	£276.90

Reference: Paragraph 6, Schedule, The Coroners Allowances, Fees and Expenses Regulations 2013

- 3.3 Nationally there is a shortage of pathologists and the problem is increasing. In May 2021 there has been a Parliamentary Justice Committee considering the shortage of pathologists and they comment that;

- The pathology system is propped up by older doctors and there is a lack of younger colleagues entering the specialism.
- The profession is approaching a critical point of losing knowledge and capability to both undertake examinations and to train new pathologists.
- There are nearly 600 vacancies of consultant pathologists nationally.
- The costs for an examination and reporting (£96.80) does not reflect the cost of the work involved and needs urgent review.

(Appendix 1 to this report).

- 3.4 Some Local Authorities, notably Leicester, have addressed this by defining what is a post-mortem involving additional skills, that is then paid at a higher rate (£276.90). This in turn will put extra pressure on our service as pathologists are free to choose where they work, and it will become increasingly difficult to employ

enough pathologists to meet our demand if nearby areas increase their remuneration rates.

- 3.5 The consequence of a lack of pathologists is delays in examinations leading to families having to wait longer for release of their loved ones. It will also increase the demand on space within the existing mortuary.
- 3.6 The pathologists, who mainly work in Birmingham, have been requesting for increased payments by defining what is a post-mortem examination involving additional skills, thereby attracting a higher payment for these post-mortems. Appendix 2.

4 Options considered and Recommended Proposal

- 4.1 The two options available are to either maintain the status quo or to agree that where specialist skills are used then the higher rate for these post-mortem examinations is paid.
- 4.2 Birmingham and Solihull Coronial area averages between 1700 and 1800 post-mortems per annum and the expected increase in costs is £40k per quarter or £160k per annum.
- 4.3 The consequence of not meeting this request is that some pathologists may leave for higher paying areas and with the national shortage, even upgrading the payments detailed in this report may not attract pathologist back to the area. This in turn will cause angst to families over delayed releases and increased storage costs where we have little (if any) excess capacity during winter.
- 4.4 Your officers recommend that the new definition for post-mortem and post-mortem with specialist skills are accepted and paid at the rate defined in The Coroners Allowances, Fees and Expenses Regulations 2013.

5 Consultation

- 5.1 HM Coroner for Birmingham and Solihull is sighted on this report.
- 5.2 The matter within the report relates to whether or not payments are made at the existing rate or at a higher rate for bodies that require specialist skills. The Regulations covering this were laid in 2013 and therefore it is a decision on payment rates in accordance with the Regulations and does not require consultation.
- 5.3 The Cabinet Member for Finance & Resources has been consulted on this report.

6 Risk Management

- 6.1 Consideration was given to outsourcing some post-mortems; however even if there were facilities within other establishments (hospitals primarily) it would be the same pathologists undertaking the work as they are the ones approved by HM Coroner. As a result, there would be no cost saving and there would be an

additional cost to pay such: as the hospital facility/time; transportation cost for the bodies; on top of the post-mortem cost.

6.2 In addition, there is a requirement for all Coroners to minimise the movement of the deceased and movement outside of the coronial area.

6.3 The medium-term plan is the West Midlands and Warwickshire regional centre(s) of excellence for mortuary and pathology, which is scoping a centre or two centres of excellence to undertake this service for the West Midlands. This would not negate this issue as the same pathologists would more than likely be working in the new facility. If Government were to up-date the fees in the 2013 Regulations, it is likely that the unit rates for both would rise and the City Council would still be left with pathologists pushing for the higher rate for some examinations.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The time around death and bereavement is a very sensitive time and treating people and families with dignity throughout is essential. Avoiding unnecessary delays in the release of loved ones back to their families for their funeral is consistent with the priority of Birmingham is a fulfilling city to age well in.

7.2 Legal Implications

7.2.1 The Coroner is an independent Judicial Officer, responsible only to the Crown. They have a statutory duty to investigate sudden, violent or unexplained deaths. The Coroner does not work for the Council or any other organisation, but the law requires the local authority to provide the Coroner with the facilities required to carry out their work. The council is therefore required to support the work of the Coroner. Determining the cause of death is required and therefore post-mortem examination is required.

7.3 Financial Implications

7.3.1 The table below examines 3 months of work and the actual cost for 501 post-mortems against the cost for the same post-mortems if the rates for specialist skills being used had been applied.

Type	Dec-20	Jan-21	Feb-21	Total PMs	Cost of PM @£96.80	Cost Of PM @£96.80 or £276.90	% Increase
Standard PM	90	108	95	293	£28,362.40	£28,362.40	0.00%
Specialist PM	66	76	66	208	£20,134.40	£57,595.20	65.04%
Totals				501	£48,496.80	£85,957.60	43.58%

7.3.2 Based on this, the cost for post-mortems would rise by £160k per annum. Application of the existing differential fees would result in 40% of post-mortems attracting the higher specialist rate, whereas currently 100% are paid at the lower

standard rate. As the budget is based on 100% standard rate post-mortems, reflecting a split of 60% standard and 40% specialist results in additional pressure of £160k. This has been built into ongoing MTFP discussions as part of the budget setting report due at Cabinet in February 2022.

7.3.3 If the rate of post-mortems were undertaken were to slow, there would be an increase in the time bodies are held at the mortuary prior to release to families. This in-turn would put an extra demand on the available refrigeration and freezer space.

7.3.4 Coronial Service costs are recharged to Solihull MBC at the rate of 16% of the total budget.

7.4 Procurement Implications (if required)

7.4.1 None. Pathologists who undertake this work are vetted and approved by HM Coroner for Birmingham and Solihull. There is a national shortage.

7.5 Human Resources Implications (if required)

7.5.1 None. These are not employees of Birmingham City Council.

7.6 Public Sector Equality Duty

7.6.1 The impact of any reduction in pathologist support is that there will be an increased delay in the time between death and the release of bodies to families. This affects all families but especially those religions where there is a critical time between death and funeral services.

8 Background Documents

8.1 Letter from Pathologists to HM Coroner for Birmingham and Solihull
The Coroners Allowances, Fees and Expenses Regulations 2013

List of appendices accompanying this report:

Appendix 1 Parliamentary report

Appendix 2 Letter from Pathologists

**The Coroner Service Contents**

4 Role of pathology

Responsibility for supply of pathology services to the Coroner Service

119. We heard that there is a serious shortage of pathologists available to carry out post-mortem examinations for coroners which leads to delays in releasing bodies and completing coroners' investigations. Neither any central government department nor the NHS accepts responsibility for the supply of pathology services to the Coroner Service.¹¹⁹ Post-mortem examinations and reports prepared for coroners by pathologists are not covered by NHS contracts. Coronial pathologists are usually NHS consultants working privately outside their normal hours. Their services for coroners are provided for a fee.

120. The standard fees for pathologists' services to the Coroner Service are set by the Lord Chancellor with the agreement of the Lord Chief Justice.¹²⁰ André Rebello, Honorary Secretary of the Coroners' Society of England and Wales, told us:

a pathologist is supposed to be able to do a standard post-mortem for £96.80 and £276.90 for a special examination. I do not know how many of you have recently employed a plumber, bricklayer or joiner, but £96.80 often reflects tens of hours of reading medical records, examining the body, preparing slides, looking down the microscope, deciding what to send off to toxicology and what other special examinations are needed.¹²¹

Shortage of pathologists

121. The shortage of pathologists available to do work for coroners is long-standing and becoming more acute. Dr Mike Osborn, President of the Royal College of Pathologists, told us:

You will run out of pathologists to do post-mortems for you [...] there will be huge delays and problems because pathologists are not taking on post-mortems—it is not part of NHS work. There are already 580 consultant pathology vacancies in this country. There are not enough pathologists to do the diagnostic work in this country, and it has come down to the basic choice of [NHS] trusts supporting cancer diagnosis, inflammatory bowel disease or post-mortems, which is not part of their role.¹²²

The Coroners' Society told us:

The service is essentially being propped up by older and experienced pathologists with fewer younger colleagues coming through the ranks to replace them. The impact on families is delayed investigations and delays in the bodies of their loved ones being released back to them for funerals to take place.¹²³

And that

Neither the DHSC nor the MOJ will grasp this nettle. It must be grasped before there is no-one left who can train autopsy pathologist of the future.¹²⁴

<https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/68/6807.htm>

Published online 27 May 2021

14th July, 2021

Dear Mrs Hunt,

Thank you for your prompt response.

We agree in principle to this fee schedule, but wish to propose minor amendments/refinements to more accurately enable recognition of additional effort required for a small number of cases, which might fall outside the Leicester model as it stands. We have drawn from our own collective experience and from practice in other Coroners' jurisdictions. We suggest the Special Examination fee be applicable for the following categories;

- Post-mortem examination on a decomposed body (#1).
- Complex peri-operative & post-operative or other complicated medical deaths (#2).
- Deaths during or following an invasive medical/radiological procedure.
- Deaths in a care/nursing home where there are potential allegations of neglect, abuse or suboptimal care.
- Deaths during custody or deprivation of liberty (#3).
- Deaths from abroad.
- High risk infectious cases (#4).
- Death related to occupation (#5).
- Maternal deaths (#6).
- Bodies recovered from fire (#7).
- Bodies recovered from water (#8).
- Examinations requiring histology.
- Examinations requiring interpretation of toxicology results (#9).
- Non-forensic road traffic deaths and other civilian multiple mutilating trauma (#10).
- Special circumstances (including SUDEP, SACD, maternal deaths) (#11).
- Any other category, as deemed by a Coroner and/or a Pathologist, as requiring a Special Examination (#12).

- #1 The degree of decomposition being more than trivial or minimal and sufficient to cause deviation from a standard autopsy protocol and/or require extra procedures (as outlined in the Leicester schedule).
- #2 This would include the Leicester category of *death before recovery from an anaesthetic, or death immediately after induction of an anaesthetic*, also other cases requiring time-consuming review of a considerable body of medical notes/evidence and/or complicated medical interpretation or opinion, cases subject to NHS or other regulatory body investigation (eg SUI, WMAS, CQC etc), and where there are other complaints to be addressed and/or detailed explanations requested for the benefit of next-of-kin or other interested persons.
- #3 For example deaths in Police custody or prison, and deaths whilst sectioned under The Mental Health Act (1983).
- #4 To include suspected or proven hepatitis B, hepatitis A, HIV, TB, SARS-CoV-2 COVID-19, or other infectious pathogens (predominantly HSE Hazard Groups 2 to 4).
- #5 To include suspected or proven scheduled prescribed industrial disease, and deaths at work, where there may be additional investigation by other organisations such as the HSE.
- #6 To include the Leicester categories *unexplained death in a pregnant mother, death during labour and death of a mother within 28 days of delivery*, but extended to 12 months post-partum to encompass the NCEPOD/CMACE/CEMD definition of a late/delayed maternal death (ie more than 6 weeks but less than 12 months after the end of pregnancy).
- #7 To also cover cases where death may ultimately not be attributed to burn injury and/or smoke inhalation.
- #8 Where drowning is suspected and may, or may not, be confirmed pathologically.
- #9 Where toxicology results require time-consuming interpretation and/or research for poly-pharmaceutical interactions, but not including, for example, negative results in a straightforward hanging case.
- #10 Railway deaths may involve just as much effort as RTCs, and will inevitably involve a BTP investigation. Civilian deaths alongside the military, and aviation deaths exceptionally occur.
- #11 Cases where there are published best practice guidelines & protocols, involving toxicology and/or histology, also ad hoc cases where the MCOD is initially unascertained.
- #12 It is an important principle (supported by the RCPATH & Chief Coroner) that it must be the individual Pathologist, invited to handle any particular case who, in consultation with HM Coroner, ultimately has the professional discretion to decide upon the nature/extent of an examination, tailored to the circumstances in hand – for example, taking toxicology samples and/or histology specimens & determining a case to be potentially hazardous to mortuary staff/funeral personnel are clinical decisions, not legal ones.

This is not exhaustive. Rare scenarios such as electrocution, brachytherapy/radioactive implant removal and poisoning with toxic substances hazardous to mortuary staff (cyanide poisoning) spring to mind but could be accommodated in the spirit of the above schema.

The anticipation is that the Pathologist's fee is independent of histology or other costs, which would be negotiated by the relevant provider (such as the histology & toxicology laboratories and post-mortem imaging services), and invoiced directly to the Local Authority without interlocution by the Pathologist.

We feel that the above suggestions are a more reasonable and proportionate compromise than the present scale of fees, mindful that the Cambridge & Sunderland (Deputy Chief Coroner) jurisdictions are paying the Specialist Examination fee for all autopsies, a number of areas similarly for all proven or unknown status COVID-19 infection cases. We believe that the Leicester jurisdiction pays the highest rate fee for all inquest appearances.

We look forward to your comments on these proposals.

With kind regards,

Yours sincerely,

Dr A T Warfield. Dr S E Trotter. Dr G Langman. Dr A Williams. Dr W Boyle.

[electronically verified, but not signed, to avoid further delay]

