

ACPO HWG FORENSIC PATHOLOGY PRACTICE ADVICE FOR POLICE

This revised document has been published in a draft format as an interim product due to the development of Authorised Professional Practice (APP). It replaces Chapter 11 Pathology in ACPO (2006) Murder Investigation Manual. In order to support fair access to learning and development this document can be provided in alternative formats.

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11.1 INTRODUCTION

Forensic pathology is an essential element in most suspicious deaths and homicide investigations. Senior investigating officers (SIOs) require a clear knowledge of what pathology can add to the investigation. They also need an understanding of the complex issues that can surround the discipline.

Some Home Office Registered Forensic Pathologists are employed by universities or hospital trusts, but the majority are self-employed practitioners. Although they are appointed in each suspicious death case by the coroner, for which they receive a small fee, the main case fee is paid by the police.

Forensic pathology provision is overseen by the Pathology Delivery Board (PDB) at the Home Office and a small unit within the Home Office Science Directorate. The PDB is responsible for managing the Home Office Register and issues connected with the medical investigation of death in police cases.

11.2 DEVELOPING THE STRATEGY

11.2.1 STRATEGY CONTENT

There are a number of strategic issues that must be addressed in relation to pathology:

- Notifying the coroner, who will appoint a pathologist to undertake the post-mortem examination in consultation with the police (see rule 6(1)(b) Coroners Rules 1984 - <http://www.legislation.gov.uk/uksi/1984/552/made>);
- Assessing the value of a pathologist's attendance at the crime scene or access by remote visual means;
- Liaising with the pathologist throughout the investigation;
- Removal of the body, including
 - what actions must be performed prior to its removal;
 - supervision of removal of the body;
 - continuity of the body from the scene to the mortuary;
 - identifying the body to the pathologist, prior to the post-mortem examination;
- Deciding who should attend the post-mortem examination and/or scene, including specialists;

- Providing the correct resources at the post-mortem examination to deal with exhibits, samples and the taking of photographs;
- Forensic post-mortem examinations must take place in a licensed mortuary which complies with the mortuary standards guidance document (***Forensic Science Regulator's Standards for Facilities Employed for "Forensic" Post-Mortem Investigations (England, Wales and Northern Ireland) V1.31 2012***);
- Family liaison considerations presented by the post-mortem examination;
- Potential for an additional examination of the body or relevant material, ie, the second or 'defence post mortem examination';
- Release of the body;
- Issues surrounding seizure and retention of Human Tissue (see **11.3.10 Exhibits**);
- Additional considerations in relation to child death investigations.

These issues and any additional elements of the forensic strategy must be logged in the Policy File and continuously reviewed.

11.3 IMPLEMENTING THE STRATEGY

11.3.1 KEY ROLES

Pathology plays an essential role in forming the forensic strategy. The following professionals are key to this process:

Home Office Registered Forensic Pathologist (England and Wales)/Consultant Forensic Pathologist (Scotland)/State Pathologist (Northern Ireland).

The SIO can draw on the expert assistance of a Home Office Registered Forensic Pathologist on a number of issues including:

- Advising on the removal of the body to the mortuary;
- Assisting with the identification of the victim;
- Assessing the size, physique and previous health of the victim;
- Determining the cause, mode and time of death where possible;
- Obtaining and recording evidence, including advising on detailed photographic evidence of external and internal injuries;
- Providing advice on the possible type and dimensions of any weapon;
- Setting the post-mortem examination findings in context with the initial crime scene assessment;
- Assisting the SIO with early lines of enquiry;
- Contributing to the forensic strategy;

- Contributing to the decision-making process throughout the inquiry as appropriate.

Strategies relating to crime scene management and forensic science are inextricable from pathology. The SIO will need to take account of the objectives and outcomes of all three when developing, reviewing and managing any of these strategies.

All forensic pathologists who are registered on the Home Office list are members of a group practice, ie, a core of at least three Home Office Registered Forensic Pathologists, which will have an agreed Memorandum of Understanding (MoU) with the local police forces served by the practice. The practice will ensure that a Home Office Registered Forensic Pathologist is on call twenty-four hours a day, seven days a week to respond to requests to attend scenes, and to conduct post-mortem examinations in accordance with the provisions of the MoU and the ***Code of Practice and Performance Standards for Forensic Pathology in England, Wales and Northern Ireland January Draft V1.62 2012***.

The forensic pathologist will advise on health and safety issues with the Crime Scene Manager (CSM) at the scene, and Anatomical Pathology Technologist (APT) within the post-mortem examination room or mortuary. It is good practice for a Home Office Registered Forensic Pathologist to conduct post-mortem examinations. However, when non-Home Office Registered Pathologists undertake post-mortem examinations of a suspicious death, they **should** also comply with the ***Forensic Science Regulator's Standards for Facilities Employed for "Forensic" Post-Mortem Investigations (England, Wales and Northern Ireland) V1.31 2012*** and the ***Code of Practice and Performance Standards for Forensic Pathology in England, Wales and Northern Ireland January Draft V1.62 2012***.

Coroners

The coroner has lawful custody of the body and, after consultation with the 'chief officer of police' under **rule 6(1)(b) of the Coroners Rules 1984**, should appoint a Home Office Registered Forensic Pathologist to conduct a post-mortem examination in cases of violent, unnatural or sudden death with unknown cause. It should be noted that, under **section 20(1)(b) of the Coroners Act 1988** (see <http://www.legislation.gov.uk/ukpga/1988/13/section/20>), a coroner may 'request any person whom he considers to possess special qualifications for conducting a special examination of the body to make such an examination'. The police, if they have notified the coroner under **rule 7 of the Coroners Rules 1984** (see

<http://www.legislation.gov.uk/ukxi/1984/552/made>), have a right in law to be present at the post-mortem examination.

11.3.1.1 Coroner's Officer

Coroners' officers were traditionally police officers or police employees working directly to the coroner. However, there is now a tendency for them to be employed by local authorities.

It is essential that the enquiry team establish early liaison with the coroner through the coroners officer in order to obtain the necessary authority to conduct the post-mortem examination and have a Home Office Registered Forensic Pathologist appointed.

The coroner's officer should normally attend the post-mortem examination and are responsible for providing the medical records of the deceased.

There is wide variation between different coroners' districts. A designated coroner's officer, who works directly to the coroner only, should be responsible for producing the necessary file relating to identification, which will allow the inquest to be opened. This ensures that action is taken to satisfy the coroner that all examinations are completed before the body can be released. The SIO shall liaise with the coroner in order to facilitate the release of the body when no further examination is required by the prosecution and defence.

11.3.1.2 Other Roles

If the circumstances of the case require additional expertise to support the pathological examination, such as a paediatrician, cardiologist or neuropathologist, it is the responsibility of the pathologist to make appropriate recommendations to the SIO, senior scenes of crime officer (SOCO) and coroner.

In all cases where additional experts are used on/for pathological issues the original pathologist should be consulted and all necessary steps taken to ensure that there is continuity (see ***Forensic Science Regulator's Guidance (2012) Legal Issues in Forensic Pathology and Tissue Retention V1.33***).

The pathologist is responsible, in consultation with the coroner and the SIO, for advising on the need for such examination. Other imaging techniques that could be used to assist the post-mortem examination

process include CT and/or MRI scanning (Cross Sectional Imaging). This technology can be employed for court presentation purposes, but if shown to the jury consideration should be given to ensuring what is shown is in a form which can be exactly replicated in case of an appeal.

Depending on the nature of death, the SIO should consider (in consultation with the pathologist and coroner), inviting additional specialists to attend the post-mortem examination. Examples of specialists who might be considered by the SIO include, but are not restricted to:

- Odontologist;
- Forensic Biologist;
- Medical Illustrator (decomposed bodies);
- Toxicologist;
- Ballistics Expert;
- Crime Scene Investigator/Manager;
- Entomologist;
- Anthropologist;
- Other pathology disciplines such as paediatricians and neuropathologists.

Rule 7 of the Coroners Rules 1984 allows the police (as investigators) to attend the post-mortem examination. In addition to the professional resources outlined in **11.3.1 Key Roles**, the SIO and the coroner will also need to consider whether any additional persons should attend. However, it should be noted that it is for the coroner to authorise, under rule 7 of the Coroners Rules 1984.

Formal identification of the body is normally undertaken by a member of the deceased's family. The coroner has discretion to allow others to attend under rule 7(4) of the Coroners Rules 1984. It should be noted, however, that a legally qualified medical practitioner nominated by the family or deceased's doctor has a right to attend the post-mortem examination under rule 7(3) of the Coroners Rules 1984. Similarly, if a family member of the deceased happens also to be a legally qualified medical practitioner, that person has a right to attend the post-mortem examination under rule 7(3) of the Coroners Rules 1984.

It is also increasingly common for solicitors to request that the coroner permit them to attend in person under rule 7(4) of the Coroners Rules 1984.

The coroner, pathologist and the mortuary manager (as provided by **rule 8 of the Coroners Rules 1984** – see <http://www.legislation.gov.uk/ukxi/1984/552/made>) are to ensure that the police investigation is not compromised by any such attendance, in terms of, for example, interview strategy, contamination, press compromise.

The SIO will need to consider whether or not they should attend the post-mortem examination but should always appoint a senior member of the management team to attend if they are unable to do so or decide not to. This will ensure that the SIO is always directly involved if there are interpretational issues or findings that could significantly alter the course of the investigation. In some cases the SIO may wish to send their deputy, who must be comprehensively briefed regarding their role and the evidential issues. This decision must be weighed against the other strategic issues that the SIO will inevitably be engaged in. The SIO or their nominee should attend at the start and the end of the post-mortem examination to be briefed by the pathologist.

Radiological examination should be considered in cases of suspected non-accidental injury in children and in all deaths involving firearms or explosives. It can also be of considerable assistance in the examination of badly burnt or decomposed bodies, and may be appropriate in other instances, eg, sharp wounds where knives have impacted on bone.

An exhibits officer will be required to record details of all exhibits retained, including human tissue.

11.3.2 INITIAL RESPONSE AND PRE POST-MORTEM EXAMINATION ACTIONS

Note: It is a fundamental responsibility of the police to preserve life. Officers should not assume a person is dead unless the circumstances are obvious, for example, a badly decomposed body. Otherwise a suitably qualified professional should attend the scene to pronounce life extinct in accordance with local force instructions.

Once a body has been discovered and a violent, unnatural or sudden death with unknown cause is suspected, it **must** be reported to the coroner for that district as it is that coroner's duty to investigate all deaths of this nature, under **section 8 of the Coroners Act 1988** (see <http://www.legislation.gov.uk/ukpga/1988/13/section/8>). The SIO is responsible for reporting to the coroner/coroner's officer immediately

that an investigation is underway. Where there is a requirement to move a body from one coroner's jurisdiction to another, the respective coroners must be informed and their authority sought before any movement takes place. In many forces the coroner's officer has an important role to play in this regard. It should be noted that under **section 22 of the Coroners Act 1988** (see <http://www.legislation.gov.uk/ukpga/1988/13/section/22>), it is only permitted to remove a body to a district adjoining the relevant coroner's district for the purposes of conducting a post-mortem examination.

The use of a non-Home Office forensic pathologist may lead to a homicide being missed or could lead to the loss of vital forensic evidence such as DNA from the offender as they are not trained to deal with such cases.

In the initial stages of an investigation, the SIO must ensure that the following are considered:

- Details of all persons who have attended the scenes/victim are recorded (recording them in the Crime Scene Attendance Log);
- Separate medical practitioners should be used for victim(s) and suspect(s) examinations in order to avoid cross-contamination issues;
- Details of all treatment and drugs administered to the victim are recorded and relayed to the pathologist (prior to the post-mortem examination, where possible);
- Details of any drugs, illegal or prescribed, found at the crime scene(s) are recorded and relayed to the pathologist;
- The victim's medical records are obtained and made available to the pathologist prior to the post-mortem examination;
- Any suspicion of hazards suspected to have caused the death are communicated to those at risk; and
- Wishes of the next of kin relating to the transplant of organs, which may require careful consideration depending on the cause of death. (See **Scott, I. (2010) Organ and Tissue Donation Opportunities during Police Investigations into Suspicious Deaths or Fatal Road Traffic Collisions, The Journal of Homicide and Major Incident Investigation, Volume 6, Issue 1.**)

11.3.3 CRIME SCENE ATTENDANCE

The Forensic Pathologist may be requested to attend a crime scene, along with other specialists according to their relevant expertise for the following reasons:

- To undertake a crime scene assessment;
- Cases involving multiple stabbings, mutilation or shootings involving multiple shots;
- Complex scenes, eg, a buried body or the attempted destruction of a body by fire;
- Where there are multiple scenes and/or multiple deaths;
- Circumstances where samples are required to be taken in situ, e.g.;
- sexual offences
- weapons embedded in the body
- entomological evidence exists (this is best performed by an entomologist);
- Where advanced decomposition has occurred;
- To advise on removal of the body (see **11.2.1 Strategy Content**).

11.3.3.1 Briefing the Pathologist

Prior to an attendance at the crime scene the SIO, Deputy SIO or delegated person must fully brief the pathologist, in writing where possible, and ensure the needs of the investigation are communicated. The following key areas should be included in the briefing:

- Identity of the deceased, if known;
- History of the deceased - including the medical history of the victim, drugs found at the scene and actions taken or developments since the discovery of the body;
- Timescales concerning the finding of the body, the last sighting and any other significant times which may impact upon an estimation of the time of death;
- Any additional information received from other experts if appropriate;
- Initial evidence from witnesses;
- Scope and priorities of the investigation;
- Any special evidential expectations and requirements of the scene examination and port mortem; and
- Circumstances of the scene and death so that potential experts are discussed and assessed with the pathologist.

At the briefing the pathologist, in liaison with the SIO, the Crime Scene Manager (CSM) and other experts, will evaluate the available information and identify:

- Health and safety issues;
- Evidential issues raised by the circumstances of death and how these issues are best approached;
- Risk of contamination posed by the circumstances of the case, and the measures that are required to prevent such contamination;
- How the examination of the scene and body should be approached;
- The best location for the post-mortem examination and, if possible, an approximate time of arrival at that location.

Pathologists should make a detailed, dated and timed record of the briefing.

Pathologists must record full details of the scene and the body, and document both their own actions and those of others that may be significant to the pathologist's examination.

11.3.3.2 Taking Specimens

It is essential that no specimens are taken from the body until there has been consultation between the pathologist, SIO, CSM and other forensic experts. Samples at the scene should be taken under section 19 of PACE 1984, but if the body is not in 'premises' as defined by **section 23 of PACE Act 1984**

(<http://www.legislation.gov.uk/ukpga/1984/60/section/23>)

common law powers should be used. If material from the body is to be retained and/or preserved, the coroner must be informed.

Where it is thought likely that trace evidence may be shed or contaminated by manipulation of the body into the body bag, it may be advisable to remove some or all of the clothing at the scene. All specimens should be taken using only equipment supplied or approved by the SOCO. If clothing is to be cut, only instruments supplied by the SOCO should be used.

When deciding what material will be relevant in any particular case, taking samples from the following areas should be considered:

- Tapings from exposed body surfaces, uppermost surfaces of clothing and known contact areas;
- Combing of head, beard, moustache and pubic hair;
- Plucked hairs from the above sites (additional hair samples may be needed if there is objective evidence of chronic drug use);
- A swab or swabs from the mouth, teeth, genitalia, and any injured or moist surface areas of the body, specifically bite marks;
- Tapings from the hands where any foreign material is recognised; and
- Scrapings from underneath the fingernails of each hand, or fingernail cuttings.

Where the death may be related to firearms or explosives, samples must be taken from hair and hands using only the appropriate, specific sampling kits approved by the relevant forensic science laboratory.

If the pathologist is unable to attend or is delayed and it is agreed the removal of the body is essential, for example, because of the locality or adverse weather, the SIO should ascertain from the coroner and pathologist what action might be taken prior to removal. When a scene has not been attended, photographs, video recordings and other imaging techniques may be useful in the subsequent briefing of the pathologist.

11.3.3.3 Removal of the Body

When a scene has been assessed and the removal of the body authorised by the coroner and approved by the SIO, the CSM, with assistance from the pathologist if appropriate, will usually supervise the packaging and subsequent removal of the body. If trace evidence has not been collected at the scene, bags may be placed over the deceased's hands before the body is removed. If a bag is to be similarly placed over the head, it must be remembered that any open head wound is likely to shed blood into the bag during transit. This may obscure such details as the direction of dried bloodstains and make it difficult to collect trace evidence. It is advisable to examine the head for such material at the scene, where applicable, and to photograph it, prior to bagging.

On arrival at the mortuary, the body should remain undisturbed, still in its wrapping or body bag, until the pathologist arrives to undertake the examination. This is to confirm continuity of the body, ie, the body at the mortuary is the body from the scene, and prevent possible contamination. This is unless any different action has previously been

agreed with the SIO, or other person designated by the SIO, for some specific purpose. It is important that the body is not refrigerated if the temperature needs to be taken to assist with the estimation of the post mortem interval, ie, the time since death.

The SIO is responsible for ensuring continuity of the body. The SIO must designate an officer to accompany the body from the crime scene to the mortuary, and to identify the body to the pathologist.

11.3.4 LIAISING WITH THE PATHOLOGIST

The role of the pathologist is not limited to the actual post-mortem examination. There may need to be regular contact between the investigation team and the pathologist throughout the investigation, including at certain decision-making points with the Crown Prosecution Service (CPS). This is particularly the case when evidence relevant to the injuries or cause of death becomes available from witnesses, scientists or the offender.

The need for effective lines of communication between the SIO, coroner and pathologist is essential. As soon as the case has been referred to the CPS, details of the CPS lawyer should be provided to the coroner. Photographs of the scene and known, relevant scientific results from a post-mortem examination e.g. Blood results, must be relayed to the pathologist as soon as possible, along with any other issues affecting the injuries or cause of death that become apparent during the investigation.

11.3.5 VICTIM IDENTIFICATION

In the majority of cases, the identity of the victim will be known and they can be positively identified by a relative or friend at an appropriate time. Identification should usually be made by two independent people for the purpose of corroboration. Viewing before a post mortem examination should be considered by the SIO on a case by case basis but should normally be avoided unless there is an important investigative need. This is to reduce the possibility of cross contamination of trace evidence and to facilitate the timeliness of the post-mortem examination. Viewing the deceased is facilitated by the family liaison officer (FLO) through the coroner's office.

Where the identity of a victim is unknown, it is of paramount importance to discover this as soon as possible. On occasions, the body may be mutilated or have been concealed for such a time that post-

mortem changes make recognition impossible. The detailed examination of the deceased for evidence of identity is a specialised task for the pathologist and other experts. The following methods will assist in identifying the victim where the body is decomposed, dismembered or otherwise unsuitable for visual identification (see **NPIA (2009) Briefing Guide to Assist Body Identification.**)

- Fingerprints;
- Dental records;
- DNA profiling;
- Tattoos, scars and other unusual marks;
- Property and clothing;
- Jewellery;
- Facial reconstruction.

When skeletal remains are found, information can usually be provided concerning:

- Whether the remains are actually bones;
- Whether the bones are human;
- The sex of the person;
- The age of the person;
- The height of the person;
- The race of the person.

In the cases of unidentified bodies and mass fatalities, the SIO should ensure the pink Interpol Disaster Victim Identification form is completed in consultation with the designated force Senior Identification Manager (SIM). The designated force SIM should also use the Interpol processes for circulating details of unidentified bodies, if applicable.

For investigations relating to bodies or body parts washed up along the coastline, consideration should be given to the possibility that such remains may have emanated from one of several burial grounds, sited on the UK's coastal areas. In these cases it is recommended that early contact be made with the Serious Organised Crime Agency's Missing Persons Bureau (MPB). The MPB has worked closely with the Home Office Forensic Pathology unit in providing support and advice for the early identification of such remains.

It is anticipated that in the future a searchable database of persons who have provided a DNA sample, as a condition of the licensing regulations relating to this mode of interment, will be held by the MPB. Once this facility is operational, the potential to identify or eliminate such remains at the early stages of an investigation will be an invaluable investigative

tool for the SIO. All enquiries relating to this subject should be addressed to the MPB <http://www.soca.gov.uk/about-soca/missing-persons-bureau>.

In all instances the SIO should ensure the victim's family are kept informed of developments, provided with the Home Office Victim's Family Pack and given appropriate support.

11.3.6 TIME AND CAUSE OF DEATH

Evidence of the time of death based on factual evidence, such as when the victim was last seen or when they were found dead, tends to be more accurate than that based on the condition of the body and the immediate environment. Any estimates not based upon independent verifiable fact should be treated with caution. Such estimates may be liable to error. However, temperature readings may be more reliable for estimating time since death in the early post-mortem interval stage. A pathologist is more likely to provide a range of times during which death is most likely to have occurred. Even an approximate time of death can be invaluable in narrowing Trace Interview Eliminate (TIE) parameters or providing information for the suspect and witness interview strategy. **It is, therefore, important that the SIO obtains from the pathologist some indication of the time period within which death has occurred.**

Uncollected mail and newspapers may give an indication of the approximate time and date of death. The condition of the environment, the presence of food and dirty dishes, as well as cell site information and data communications via passive data generators can also be useful indicators. Consideration should be given to developing and using timelines to assist in determining the facts.

Forensic analysis of alcohol levels, which can be provided by the force's forensic provider, may also be useful. Blood alcohol levels may assist either solely or in combination with other methods in providing an estimate for the time of death in the early post-mortem interval phase. Alcohol back-calculations in Road Traffic Collision cases are well established and based on sound data. Similar conclusions about the time that has elapsed since drinking can be drawn in fatal cases, but certain factors need to be considered that could affect the alcohol levels seen, e.g., if victim had diabetes, or died of hypothermia.

Where the contents of a last meal are unusual or have distinctive ingredients which may tie in with a known meal, this can assist in establishing a time of death by confirming sightings from a potential witness. However, the physiological behaviour of the digestion system varies and estimating the time of death using stomach contents emptying has to be assessed with great caution due to the many variables that could affect the rate of emptying. Stress as well as a head injury can slow down or stop the digestion process. Should the SIO require a forensic expert to establish time since death, this should be discussed with the pathologist initially.

The cause of death should be included in the pathologist's report and explained in both plain English and in medical terms.

The cause and/or manner of death may be a pivotal factor in an allegation of homicide. It is, therefore, essential that the SIO fully understands the cause of death identified by the pathologist, and the reasons for coming to this conclusion. The SIO must be prepared to draw on material generated by the investigative team to assist or challenge the pathologist's conclusions.

See also **Swift, B. (2010) *Methods of Time Since Death Estimation within the Early Post Mortem Interval. The Journal of Homicide and Major Incident Investigation, Volume 6, Issue 1.***

11.3.7 THE POST MORTEM EXAMINATION

The purpose of the post-mortem examination is to establish the identity of the body, cause of death, the extent of the victim's injuries and the presence of any natural disease, to collect evidence and to make a factual record of the findings relevant to the circumstances of the death. Furthermore, the pathologist may offer opinion concerning what may have happened at the scene, and when and how death may have occurred.

The coroner can authorise a post-mortem examination (see **11.3.7.2.1 Lawful Seizure**).

The mortuary used for a forensic post mortem will be determined by the coroner, and must be licensed by the Human Tissue Authority (see **Forensic Science Regulator's Guidance (2012) Legal Issues in Forensic Pathology and Tissue Retention V1.33** and **Forensic Science Regulator's Standards for Facilities Employed for**

"Forensic" Post-Mortem Investigations (England, Wales and Northern Ireland) V0.61 2012).

For further information on the powers of seizure and retention of material at post-mortem examinations see **11.3.7.2.1 Lawful Seizure, 11.3.13 Retention of Material after Post-Mortem Examination,** and **NPIA (2011) Human Tissue Retention Advice.**

The pathologist must record full details of the post-mortem examination and document the processes they have adopted. These records are disclosable to another pathologist who may be appointed by the coroner to conduct a second or defence post-mortem examination under the **Criminal Procedure and Investigations Act 1996 (CPIA)** (see <http://www.legislation.gov.uk/ukpga/1996/25/contents>). It is a disciplinary offence for a Home Office Registered Forensic Pathologist to fail to make and retain notes.

Note: The Home Office Pathology Unit will be able to advise how to make a complaint about a Home Office Registered Pathologist.

11.3.7.1 Sample Types

The SIO, following discussion with the pathologist and CSM, determines the exact requirements for obtaining samples for the investigation of crime, based on the initial crime scene assessment and available information. Samples may include:

- Anal, vaginal, oral, penile, nasal swabs (in special circumstances);
- Fingernail clippings/scrapings;
- Head and pubic hair (toxicology/trace evidence);
- Blood and urine (toxicology)
- Stomach contents (toxicology/time of death);
- Sample of blood taken at the time of admission to hospital;
- Swabbing of exposed fractures for foreign debris, eg, head fractures;
- Tissue sections for histology;
- Bile (in special circumstances);
- Ocular fluid (toxicology, in special circumstances – time of death);
- Liver, lung, brain, fat tissue (in special circumstances). (See **Faculty of Forensic and Legal Medicine: Recommendations for the Collection of Forensic Specimens, January 2012** – The Forensic Science Regulator is currently considering developing guidance for cadaveric sampling.

11.3.7.1.1 Lawful Seizure

There are two main sources of law relating to powers of seizure at a post-mortem examination.

1) The Powers provided by the Coroners Rules 1984 in relation to the preservation of material:

- which bears upon the identification of the deceased; or
- which bears upon the cause of death;

and

2) Police powers under section 19 of PACE, or less frequently used common law powers, are used to seize evidence relative to the investigation of crime. In rare cases it may be necessary to use a Section 8 PACE warrant.

As section 19 of PACE can only be used when a constable is lawfully on premises, seizure of items when not on premises can be made using common law powers; see Appendix A Report on the Police Human Tissue Audit, 2012.

A coroner's powers do not, therefore, extend to the **seizure** of evidence but they must be kept informed when material is **preserved** from the body during post-mortem examination. In the police investigation of suspicious death cases, as with all criminal investigations, it is essential that the appropriate lawful power of seizure is used to enable continued lawful retention of evidence by the police and to bring it under the purview of such legislation as the CPIA for disclosure purposes.

To assist the police investigation and to ensure that the coroner's requirements are satisfied, the Coroners Amendment Rules 2005 (see <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2005/025-2005/>) require that the pathologist, or any other person who preserves material under the coroner's authority, provide a single list of retained material (ie, human tissue) from the post mortem examination for the coroner and SIO. This should be a consolidated list of items retained under police powers or on behalf of the coroner.

A single list of all material retained at the post mortem should be produced and provided to the SIO, pathologist and the coroner. This list must be updated if material is returned to the body or next of kin, sent for further examination or returned to the coroner. The list must form a

comprehensive history of the material, which is auditable and from which the provenance of the material can be ascertained.

Material taken at a post mortem under coronial powers may subsequently be seized under police powers if required.

Human tissue seized under police powers can be lawfully retained under **section 22 of PACE Act 1984** (see <http://www.legislation.gov.uk/ukpga/1984/60/section/22>) or common law and will automatically engage police obligations of retention and disclosure to the Criminal Procedure and Investigations Act, 1996 (CPIA). (See **11.3.13 Retention of Material After Post-Mortem Examination**).

In summary, it is advised that PACE is used to seize all exhibits from the deceased at the scene (if in premises) and the post mortem examination. If the deceased is not in premises, Common Law police powers should be used.

11.3.8 EXHIBITS

Weapons and other items found at the scene will need to be assessed by the CSM, SIO and pathologist before the body is transferred to the mortuary if the weapon is still in situ within the body. The SIO should also consider the potential risks of taking recovered weapon exhibits to the mortuary due to cross-contamination issues.

Exhibits **must** be properly packaged to avoid contamination and to ensure continuity, but also, where possible, be clearly visible. A packaged knife must allow the width and length to be measured. Ideally, a photo taken of the weapon at the scene with a scale before recovery and packaging is sometimes better than the opaque tubes used for the mortuary. If the item requires actual viewing by the pathologist either pre or post forensic evaluation, the packaging will need to be renewed and the exhibit label signed by the pathologist.

Other material may be of mutual interest to the pathologist and the investigative team; it should, therefore, be preserved either at the crime scene or during the post-mortem examination. Examples of such articles include:

- Ballistic projectiles;

- Extraneous items such as hairs, fibres, blood or semen on the body;
- Ligatures (do not cut or undo the knot).

The SIO should consider:

- All items/samples are seized under PACE or Common Law (if appropriate) for all suspicious deaths and exhibited and reviewed after the post-mortem examination;
- If items/samples are retained, clearly document the reasons: for example released to the coroner for the inquest and then reviewed for disposal or seizure, or retained for an unsolved criminal investigation and/or disposed of and the family informed after an inquest or end of a criminal sentence.

SIOs should ensure that all exhibits taken at the post mortem are subject to the same integrity and continuity as other exhibits. (See ***Forensic Science Regulator's Guidance (2012) Legal Issues in Forensic Pathology and Tissue Retention V1.33***).

11.3.8.1 Recording the Post-Mortem Examination

The pathologist, in consultation with the SIO and other experts, must make a record of all injuries and assess their significance.

Visual recording, particularly of a specific process, can be useful in facilitating the review of a post mortem. This can be conducted depending on the views of the coroner and pathologist. Visual recording can be of value to:

- Create as near a complete record of the processes as possible;
- Facilitate further examination of the body in its original state;
- Assist the process of a second post-mortem examination, if one is needed;
- Assist the SIO and the investigation team in understanding crucial elements of the post-mortem examination in specific cases;
- Record the removal of ligatures and other devices from the body, where possible. These might be best captured by some form of hand-held camera, either video or still, that can be manoeuvred manually to show precisely how a particular device was applied to the body. Such a visual recording might also assist a virtual reconstruction, where this is subsequently deemed appropriate.

When still photographs are taken, it is essential to obtain detailed photographic evidence of external and internal injuries with a scale, in a legible order with a covering index (see ***Code of Practice and Performance Standards for Forensic Pathology in England, Wales and Northern Ireland January Draft V1.62 2012***). The following general principles apply:

- Photographs at the post-mortem examination should be taken under the direction of the pathologist;
- All individual/groups of injuries should be photographed with a scale;
- Photographs should be taken at an angle of ninety degrees to the injury or group of injuries;
- In addition to directed photos, the SIO may request more specific photographs;
- Where the identity of the victim is unknown, photograph the victim's clothing, tattoos, marks and unusual scars. Care must be taken when photographing clothing in the mortuary because of the dangers of contamination; clothing can always be described in detail at the post-mortem examination and photographed after the examination.

External examination of the body may reveal surface fragments of material that may be trace evidence, such as flakes of paint, glass fragments, fibre, blood, semen or hairs embedded in wounds. Foreign material may also be present under the fingernails and may include hairs, fibres, skin fragments and blood from the attacker. It is essential that these items are correctly photographed, seized, packaged, labelled and retained.

The body should be photographed while fully clothed and particular attention paid to injuries and damage to the clothing. Care must be taken when removing clothing from the victim, as valuable evidence may be altered or destroyed. Undressing the body should only take place in the presence of the pathologist. All clothing should be fully searched and any items found properly exhibited.

Body maps may be used to record the position of injuries, marks, scars and any other distinguishing features, but the pathologist should be aware that these are disclosable. It is important that only one set of contemporaneous notes (with or without diagrams) is taken and produced by the pathologist. A trained photographer should be used at post mortems at the direction of the pathologist and SIO. Consideration should also be given to using specialist photography and alternative

light sourcing to enhance specific injuries. If there are a number of bruises or other injuries, it is good practice that the pathologist gives each an identifying number when photographed for ease of reference. All photographs taken at the post mortem may be disclosable under the CPIA 1996. This includes photographs taken by the pathologist themselves.

11.3.9 THE POST-MORTEM EXAMINATION REPORT

When the post-mortem examination is complete, the pathologist will produce a report for the coroner. Under rules 10 and 13 of the Coroners Rules 1984 that report shall **not** be supplied to anyone else, including the SIO, without authorisation from the coroner. Once the coroner has agreed, a section 9 Criminal Justice Act 1967 statement will be provided to the police. In practice coroners usually consent to the pathologist providing the SIO with a copy of the report.

The report should be written as soon as possible within an agreed timescale. The pathologist will make notes, sketches and body maps during an examination, in accordance with the standards laid out in the **Code of Practice**. These additional documents are disclosable under the CPIA, Some aspects of the post mortem examination, such as examination of the brain, may take considerable time to complete and so could delay the final report. In order to allow the SIO to use the information revealed in other aspects of the post-mortem examination, the SIO should ask the pathologist to provide a rapid interim account to the coroner within fourteen days of the post-mortem examination. (See **Code of Practice and Performance Standards for Forensic Pathology in England, Wales and Northern Ireland January Draft V1.31 2012**). The SIO should, however, be aware that the results of any subsequent tests may significantly alter the findings in the interim or preliminary report and hence the conclusions of the final report could differ greatly. In complex cases the pathologist should provide the coroner and SIO with a provisional timetable for the production of the final report. When the post-mortem examination report is expected to be delayed, the SIO should liaise with the coroner and pathologist.

There should be a full debriefing between the SIO and the pathologist, followed by a preliminary circulation of the findings and relevant injuries identified by the pathologist. The full report is submitted following the coroner's authorisation once all the scientific examinations have been completed.

The SIO, or Deputy SIO, should go through the findings with the pathologist at the time of the post-mortem examination. It is essential that the SIO ensures the pathologist is kept up to date with any investigative developments, even after the report has been produced to the coroner and agreement has been given for it to be supplied to the SIO. If information subsequently revealed by the investigation impacts on the conclusions contained in the post-mortem examination report, the pathologist should produce a supplementary report incorporating that information and drawing further conclusions.

It is good practice to supply the pathologist with a record of all the exhibits taken, with their relevant exhibit numbers, at the completion of the post-mortem examination so that an accurate reference can be made to them in the report.

(See *Forensic Science Regulator's Guidance (2012) Legal Issues in Forensic Pathology and Tissue Retention V1.33.*)

As an overview the post-mortem examination report should include:

- The information the pathologist received in advance of the post mortem examination.
- Confirmation that the data justifying the decisions and actions taken at the examination of the scene and the body have been retained.
- Details of all investigations made either personally or by submission to a laboratory for report.
- Conclusions drawn and an explanation for them. Where unusual features are found but are concluded not to be relevant, the pathologist must explain why the finding has been discounted.
- The reasoning why a particular explanation is favoured where findings are open to alternative explanations.
- The reasoning that supports the conclusions, detailing all the material drawn on to support that reasoning, including reference to pertinent and current literature.
- All samples that have been retained by the pathologist, whether or not these have been assigned police exhibit references.

- Any other information required under the Crown Prosecution Service guidance on expert witnesses' obligations on disclosure (Annex K of the CPS Disclosure Manual).

See also Part 33 of the Criminal Procedure Rules 2012 (SI 2012/1726) regarding expert witnesses and the legal requirements that must be covered in an expert's report.

11.3.10 INTERPRETING POST-MORTEM EXAMINATION RESULTS

The post mortem examination findings, after they have been authorised by the coroner to be supplied to the SIO, represent a vital component of the investigative process. It is important for the SIO to consider the significance of the findings, i.e. the interpretative facts of the post mortem examination, for example, by asking 'What does this injury mean?'.

The pathologist will contribute to the interpretation of the post mortem examination results by:

- Attending conferences called by the police or the CPS to discuss the pathologist's report and/or other issues involved in the case;
- Explaining clearly all the findings and their interpretation in the context of the case;
- Considering alternative explanations, testing alternative hypotheses, drawing conclusions and giving advice based on the facts of the case and established scientific principles;
- Stating what is required before additional conclusions can be drawn, and requesting those requirements are fulfilled before any further opinions are given;
- Identifying, clarifying and summarising areas of agreement and disagreement;
- Requesting feedback to determine whether those involved in the investigation understand the outcomes of the consultations.

The SIO may wish to explore the following issues:

- **Cause of Death** – which injury was responsible for death? If there are multiple injuries, which one was the fatal injury? Significance of injuries? Degree of force used? What medical intervention was involved?

- **Time of Death** – this is useful for setting 'Relevant Time', for enquiry parameters. It may prove the suspect could have had access to the victim.
- **Toxicology** – is there evidence of victim drug abuse? Was the victim drugged or intoxicated? Stomach contents may give evidence of lifestyle or sequence of events.
- **Level of Attack** - likely to give an indication of the mode of attack, the degree of force used and over what period. Was the victim capable of 'fight or flight'? What was the likelihood of the offender being injured? Was there evidence of post mortem violence?
- **Injury Analysis** - number and type of injuries. How were the injuries caused? Evidence of defence wounds? Timing of injuries in relation to time of death? Evidence of gratuitous violence? Were there injuries caused before or after death? Are injuries consistent with accounts of witnesses? Is there evidence of bodily contact, eg, bites and scratches? Consideration should also be given to exploring the support and advice offered by the National Injuries Database, telephone 0845 000 5463
- **Body Deposition Site** - evidence that the deposition site was not the murder site?
- **Disguise Cause** - attempts by the offender to disguise the cause of death.
- **Sexual Motivation** - is there evidence of sexual interference, such as: rape, oral sex, shaving pubic hair (due to occupational, and/or ethnic/cultural reasons) penile penetration, clothing removal and semen deposits? However, the absence of such evidence does not preclude a sexual element.
- **Weapon Analysis** - type of weapon used, number of weapons, weapon found at the scene?
- **Victimology** – hate crime considerations, general health of the victim, sexual orientation, evidence of recent assaults.
- **Size and Physique of Victim** - evidence of the victim being restrained before death? Is it likely that the victim could have posed a threat after being injured? The position of defence wounds may assist.

11.3.11 DEFENCE AND SECOND POST-MORTEM EXAMINATIONS

A coroner, at the request of the defence and in the interests of justice, having been informed that a person may be charged with murder, manslaughter or infanticide, will usually agree for a further post-mortem examination to be conducted by another pathologist. However, where no offender has been identified or charged, a second, independent post-mortem examination can be conducted within twenty-eight days of the first post mortem-examination, in anticipation of any future defence requirements. This will help to facilitate the early release of the body (see **Home Office Circular 30/1999 Post Mortem Examinations and the Early Release of Bodies** <http://www.nationalarchives.gov.uk/erorecords/ho/421/2/circulars/1999/hoc9930.htm>).

Any report prepared for a solicitor acting for a defendant is likely to be a legally privileged document and not available to the police.

The coroner will not usually object to a further post-mortem examination being conducted for family members or other persons charged with having caused or contributed to the death, provided that such further examinations are conducted in the interests of justice and without undue delay, with proper notice being given to the coroner.

Whenever a post-mortem examination is required on behalf of the defence, details of the pathologist acting on behalf of the defence should be given to the coroner without delay as this will assist in the early release of the body. (It may be useful to visually record the initial post-mortem examination if the facilitation of a second post-mortem examination is not available.)

Any second post-mortem examination may be conducted by a non-Home Office Registered Forensic Pathologist. Such pathologists must adhere to the same standards as a Home Office Registered Forensic Pathologist. Defence solicitors will need to establish, for example, the nature of the wounds and cause of death. They will also need to examine the first post-mortem examination report, photographs and any other relevant items. Investigators should ensure that this documentation is available, subject to the coroner's **prior approval**.

The original pathologist should be invited to be present and, where possible, the SIO or a representative and a photographer.

As above, a second post-mortem examination report produced on behalf of the coroner at the request of the defence may not be given to the police. This report is intended for the defence should someone be charged at a later date. These reports are variable – some limit themselves to confirmation of the facts of the first post-mortem examination, for example, demographics, site, size, type of injuries etc. with no attempt to form conclusions, others include extensive conclusions and opinions

The coroner can decide to provide the police with a copy of the report from any secondary post-mortem examinations commissioned by the coroner in the absence of any charged suspects, and may order a third post-mortem examination if there are significant differences of opinion between the first and the second post-mortem examination. The coroner will retain the second report, and if an arrest in connection with the death is subsequently made, they will then provide a copy of the second report to that defendant or their legal representatives.

The third pathologist should be independent of the first two pathologists, ie, preferably from a different practice. As soon as the coroner has decided that no further examination is necessary, the body will be released for disposal by the family or executors.

On occasions, samples from the body are sent by the forensic pathologist to a pathologist acting for the defence. The forensic pathologist should be required to ask the SIO for permission to do this and mechanisms need to be in place to ensure that these samples are returned to facilitate disposal in an appropriate manner. Forensic pathologists should also be mindful of the requirements under the rules 9 and 12 of the Coroners Rules 1984 to notify the coroner of material that they preserve, and of provisions in the Human Tissue Act 2004.

11.3.12 RELEASE OF THE BODY

Home Office Circular 30/1999 Post Mortem Examinations and the Early Release of Bodies (see <http://www.nationalarchives.gov.uk/ero/records/ho/421/2/circulars/1999/hoc9930.htm>) relates to the release of bodies in cases involving suspicious death. This circular states that, subject to the interests of the criminal justice system, it is the responsibility of all agencies to treat the early release of the body as a priority.

It should also be a priority for the SIO and FLO to help the family to cope with their grief. Consideration should be given to cultural and religious beliefs held in certain communities, eg, Muslim and Jewish, that burial should occur within twenty-four hours and in any case as soon as practicable following death.

There may be a natural resistance from some communities regarding a post-mortem examination. This could be based on cultural or religious beliefs that the body should be left intact following death.

These matters require a sensitive response from the SIO, who should bring them to the attention of the coroner. Further information in respect of this is available from the Equality and Human Rights Commission. (See <http://www.equalityhumanrights.com/about-us/advice-from-our-helpline>).

The SIO and the coroner should be proactive in pursuing an early resolution of all post-mortem examinations and ensure that the conclusion of the body examination process has been communicated effectively to the family via the coroner's officer and the FLO in order to allow for the funeral to take place as soon as possible.

The SIO in consultation with the coroner should consider the following issues when contemplating the release of a body:

- Whether the identification of the victim is in dispute;
- The evidential value of retaining the body;
- The needs of the investigation;
- The need for a defence or second post mortem when the identity of the offender is unknown.

When the report is received, the coroner will provide copies of it to all those having a proper interest, including the SIO (unless the post-mortem examination report is made for the purpose of the defence, in which case it is unlikely to be shared with the police – as detailed above) and any person who has been charged in connection with the death (and to their legal advisers). Any photographic or video recording taken at an examination will also be made available by the police. The deceased's next of kin should also be advised that the report is available, if appropriate.

The coroner will not release the body unless all those having a proper interest confirm in writing that they have no objection to the body being

released. The coroner will notify his or her intention to release the body, in writing, to all such persons who have not yet confirmed their interest.

If the SIO advises the coroner that a person is likely to be arrested within twenty-eight days of the discovery of the homicide, they will not release the body until the person is charged, or until the expiration of that period - whichever is the shorter. The coroner will serve, on any person who is charged, a copy of the report of the initial examination and any records of it. However it should be noted that in practice there can be a considerable period of time before this can be done; the forensic pathologist may have to await the outcome of specialist investigations before he or she can complete his or her report. It may be possible, initially, (to facilitate performance of the second post-mortem examination) only to release the provisional findings of the forensic pathologist.

Where the coroner is initially informed that a person may be charged within twenty-eight days of the discovery of the homicide and it subsequently appears unlikely that any person will be so charged, the SIO should inform the coroner at the earliest opportunity.

Families will want to know details of when the deceased will be released for the funeral and subsequent burial or cremation. The FLO should facilitate this request, through the coroner's officer after consultation with the SIO. The coroner has custody of the body and ultimately the decision for release rests with them, and the SIO should ensure that the coroner is consulted and advised about any enquiry made.

Families should be asked if they wish to wait to receive the body complete (this could take a long time), or if they would prefer the body to be returned speedily. However, they should be made aware that some material from the body may be preserved for further examination or evidential reasons for many months or years. For example, if neuropathological examination of the brain is necessary, it may be in excess of six weeks before a report is available. In paediatric cases delays may be longer.

See **Scott, I. (2010) *Organ and Tissue Donation Opportunities during Police Investigations into Suspicious Deaths or Fatal Road Traffic Collisions. The Journal of Homicide and Major Incident Investigation, Volume 6, Issue 1.***

11.3.13 RETENTION OF MATERIAL AFTER POST MORTEM EXAMINATION

SIOs should be aware that material taken from the body and seized as part of a criminal investigation (under section 19 of PACE or under common law), is subject to the same level of continuity as any other police exhibit. As such material will go to specialists and will be out of direct police control. The SIO must ensure that the specialists who handle the exhibit maintain and evidence continuity.

The statutory duty to inform the relevant persons about which material has been preserved lies with the coroner. Although the Human Tissue Act does not apply to criminal justice samples, the Home Office and the Human Tissue Authority advise that the principles of the Act and relevant code of practice should be followed.

The SIO must be confident of:

- A lawful power to seize
- A lawful purpose to examine
- Clear policy for disposal
- The fact that the coroner has been informed in writing of all material preserved as provided by rules 9 and 12 of the Coroners Rules 1984.

Police may retain samples under section 22 of PACE, as set out in Code B below:

(c) Retention Code B of PACE

- 7.14 Subject to paragraph 7.15, anything seized in accordance with the above provisions may be retained only for as long as is necessary. It may be retained, among other purposes:
- (i) for use as evidence at a trial for an offence;
 - (ii) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked;
 - (iii) for forensic examination or other investigation in connection with an offence;
 - (iv) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.
- 7.15 Property shall not be retained under paragraph 7.14(i), (ii) or (iii) if a copy or image would be **sufficient**.

The SIO should consider whether an image is **sufficient** when deciding whether to retain human tissue during the police investigation, subsequent trial or appeal.

Material retained must be kept in secure storage and under suitable conditions. The location of material must be properly recorded, indexed and easily accessible (see ***Forensic Science Regulator's Guidance (2012) Legal Issues in Forensic Pathology and Tissue Retention V1.33***).

The CPIA states that any material obtained in the course of a criminal investigation, and which may be relevant to the investigation should be retained until the end of criminal proceedings and following completion of any appeals procedure. In general terms, this may be interpreted as the release from detention of a person convicted of homicide.

Between 2010 and 2012, the Pathology Unit in the name of ACPO oversaw a national audit of human tissue in England, Wales and Northern Ireland. Their report published in May 2012 made a number of recommendations, including the following which both ACPO and the Home Office strongly advise are adopted by forces (see ***ACPO (2012) Report on the Police Human Tissue Audit***

<http://www.acpo.police.uk/documents/reports/2012/201205RptHTA.pdf>

1. That a debrief takes place at the end of each suspicious death or homicide inquiry to decide on the question of tissue retention. This should involve as appropriate the police, coroner and the pathologist and be documented in a recoverable form.

This need not be a physical meeting, but clear decisions need to be made in consultation by whatever means concerning the retention and disposal of human tissue.

2. In cases where it is determined following post-mortem examination that a case is not suspicious and there is no further police investigation, a clear process should be followed between the police and the coroner to ensure material is suitably dealt with. To this end, ACPO and the Chief Coroner should agree the process to be followed in consultation with the Human Tissue Authority (HTA).

It is often the case that where a death is initially considered suspicious, the post-mortem examination reveals it is not. When a decision is made not to pursue a criminal investigation a discussion will be held between the coroner and the SIO regarding the tissue already taken

from the body using police powers. In such cases a clear policy needs to be agreed with the coroner on whether the seized material is required for coronial purposes, or whether the tissue can be returned to the body prior to burial or cremation. (See Recommendation 2 – ACPO (2012) Report on the Human Tissue Audit).

3. Senior Investigating Officers (SIO) must review the retention of material, samples seized and the continuity of exhibits periodically during the investigation of a suspicious death/homicide and specifically at the stage when the body of the deceased is being released to relatives and at the post-trial debrief. Material should not be disposed of without prior consultation with the coroner who may require material for the purpose of their duties at an inquest and, when appropriate, with the CPS.

There needs to be close communication between the police, the coroner, the pathologist and the CPS with regard to the disposal of material. In consultation with the coroner, the SIO should review the continued retention of material and samples seized periodically during the investigation and specifically at the post-trial debrief.

4. Forces are advised to adopt a policy whereby there are periodical reviews of retained material as reliance cannot be made on those originally investigating homicide cases due to turnover and retirements of staff.

Force Review Teams should be tasked with implementing this recommendation.

11.3.14 DISPOSAL OF MATERIAL HELD ON THE AUTHORITY OF THE POLICE

The police are subject to requirements for retaining evidence which results in material being held for much longer periods than would be the case in medical or coroner's retention. An approach must, therefore, be adopted that:

- Allows an effective means of dealing with retained evidence;
- Does not place an undue burden on police resources; and
- Respects the wishes of the family of the deceased.

Material may also be held for a considerable period and officers must be aware that it may be inappropriate to return the material to the family after such a period.

In order to avoid previous problems where human tissue has been retained without proper authority or purpose, a formal and documented debrief should take place between the SIO, coroner, pathologist and where relevant the CPS. This debrief need not necessarily be a physical meeting, but could be a conversation or correspondence in whatever form to ensure that all interested parties agree to the disposal or retention strategy. Decisions made at this debrief stage should be documented in a recoverable form. (Recommendation 1 – ACPO (2012) Report on the Human Tissue Audit).

It is good practice at the beginning of an investigation into a death, to issue an Major Incident Room (MIR) standard (some refer to 'perennial') action to deal with seized tissue at the end of the enquiry. This stands as a reminder as the tissue could be required for many months or even years.

11.3.14.1 Categorisation of Material held by the Police from post-mortem Examination

Material held by the police can be divided into three categories as per the ***Forensic Science Regulator's Guidance (2012) Legal Issues in Forensic Pathology and Tissue Retention V1.33.***):

Category 1 - material taken at the post-mortem examination which would not generally be considered part of the body, eg, scrapings, fingernails, hair, stomach contents; however, under the Human Tissue Act 2004, 'relevant material' is anything that contains cells, so Act includes the above examples.

Category 2 - samples of human tissue which are not a significant part of the body, eg, small tissue samples, blocks slides etc; and

Category 3 - samples of human tissue that incorporate a significant part of the body, eg, organs, limbs etc.

The appropriate method of disposal when the material is no longer required would depend on its category.

Blood samples are not normally returned to the family but should be disposed of appropriately.

11.3.14.2 Disposal methods

The following categorisation, drawn from *Forensic Science Regulator's Guidance (2012) Legal Issues in Forensic Pathology and Tissue Retention V1.33.*, may assist police in making decisions as to disposal of human material in suspicious death cases;

Category 1 - in all cases this material would be disposed of by incineration.

Category 2 - where the family have expressed the view that they would like material to be returned the following approach should be adopted.

- If disposal is within five years of the post-mortem examination and the family are still contactable they should be contacted and an offer of return made.
- If the disposal is more than five years from the post-mortem examination the material should be disposed of by incineration subject to the issues raised below.

In the event of material being returned to the family it is sensible to advise the family of any risks involved, and to suggest that the return is handled through an undertaker.

Where the family have made it known they want the material to be disposed of, this should be done by cremation or incineration, as appropriate. Where requests have been made for material to be retained for research purposes, it may not be considered appropriate to allow police exhibits to be used because of possible adverse interest. Research by forensic pathologists may, however, be justified on a case-by-case basis.

Where the next of kin have not previously expressed a wish about the disposal of material, the SIO should decide whether seeking their views would cause them disproportionate distress.

If the next of kin cannot be contacted, or it is not appropriate to return the material, or a decision has been made that contact would cause

disproportionate distress, the material should be disposed of by incineration.

Category 3 - where the family have expressed the view that they would like material to be returned the following approach should be adopted.

- If disposal is within five years of the post-mortem examination and the family are still contactable an offer of return should be made.
- After five years a balance must be struck between the significance of the material and the time from the post-mortem examination. The more significant the material the longer the period it would be appropriate to contact the family.
- If the material is to be disposed of, arrangements should be made for cremation or incineration as appropriate.

In the event of material being returned to the family, it is sensible to advise the family of any risks involved, and to suggest that the return is handled through an undertaker.

Where the next of kin have not previously expressed a wish about the disposal of material, the SIO should decide whether seeking their views would cause them disproportionate distress.

If the next of kin cannot be contacted, or it is not appropriate to return the material, or a decision has been made that contact would cause disproportionate distress, the material should be disposed of by incineration.

Disposal of Human Tissue

Human tissue which has been retained beyond a time period of the cremation or burial can be disposed of either by incineration or cremation.

Incineration

Incineration facilities can be provided by the local hospital which will incinerate material in a dignified and appropriate manner. The coroner's officer or Trust will be able to advise on the process to be followed.

Cremation

Cremation can only take place when regulated by the **Cremation (England and Wales) Regulations 2008**, and the cremation of body

parts is only permitted following authorisation by a medical referee based at a crematorium. See

<http://www.legislation.gov.uk/uksi/2008/2841/contents/made>

In order for a medical referee to authorise cremation, an application must have been made using **Form 2 contained at Schedule 1 of the Cremation (England and Wales) 2008 Regulations**, and evidence must be produced that the material was removed for a post-mortem examination and is no longer required. Applications are usually made by the next of kin or executor to the deceased but can be made by any near relative over the age of 16. If it is not possible to contact the next of kin or any near relatives, the application can be made by any other person as long as the medical referee is satisfied that they are the correct person to make the application. (See <http://www.legislation.gov.uk/uksi/2008/2841/schedule/1/made>).

A funeral director will normally facilitate this process, but it may not be possible to pursue cremation if all the relevant information is not available or the medical referee is not satisfied that there is a suitable applicant.

It is not envisaged that a religious ceremony would occur if the religion is not known and an inappropriate ceremony would cause more offence than none. For further information see Legal ***issues relating to forensic pathology and tissue retention – Police and Coroners approach to forensic pathology*** - [http://www.hta.gov.uk/db/documents/Police and Coroners Approach to Pathology.pdf](http://www.hta.gov.uk/db/documents/Police%20and%20Coroners%20Approach%20to%20Pathology.pdf)

The ashes should be given to the person who applied for the cremation (usually the next of kin, executor for the deceased or a near relative) but if the applicant does not want the ashes, or the cremation was applied for by someone other than the next of kin, the cremation authority can scatter the ashes in a garden of remembrance at the crematorium, in compliance with **Regulation 30 of the Cremation (England and Wales) Regulations 2008** (see <http://www.legislation.gov.uk/uksi/2008/2841/regulation/30/made>).

11.4 REFERENCES

Legal

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