



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Retention of Human Tissue and Body Part
Samples: Briefing from the Office of the
Police Ombudsman

7 June 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Tom Elliott
Mr Alban Maginness
Ms Jennifer McCann
Mr Patsy McGlone
Mr Peter Weir

Witnesses:

Mr Peter O'Sullivan	Office of the Police Ombudsman
Mr Jeff Smyth	Office of the Police Ombudsman

The Chairperson: I welcome to the meeting Pete O'Sullivan, acting senior director of investigations, and Jeff Smyth, acting director of investigations. This session will be recorded by Hansard and the report will be published on the Committee's web page. Mr O'Sullivan, you have provided a written submission which has been very helpful and we thank you for it. If you want to make some initial remarks, I am sure that members will have some questions for you.

Mr Peter O'Sullivan (Office of the Police Ombudsman): Thank you, Chair, and good afternoon, everyone.

I thank the Committee for the opportunity to brief you about the retention of human tissue by the Office of the Police Ombudsman. The issue has clearly been distressing for each of the families involved. I can confirm that we had retained seven category 3 human tissue samples relating to Police Ombudsman investigations into the deaths of four people. We have been in contact with each of the four affected families and offered them support and information, as well as an apology. It is also important to acknowledge in this forum the upset and anguish that each family has experienced.

Our appearance here will give us the opportunity to explain, as far as we can at this time, what has happened and, crucially, what we have done to rectify the situation and prevent any repeat. I am aware that the Committee has previously been briefed about a national human tissue audit commissioned by the Association of Chief Police Officers (ACPO). The Office of the Police Ombudsman was not part of that audit, and we first became aware of it in April 2012 when the PSNI informed us of the outcome of its part of the process. I immediately ordered our own internal check

and, as a consequence, we discovered that we had possession of the samples that I mentioned, relating to our investigations into deaths which occurred between 2002 and 2006.

Having taken the appropriate steps to confirm the origins of the samples, trained Police Ombudsman family liaison officers made contact with the next of kin of each of the deceased to provide information and support to them. Given that the police were involved in a similar process, we maintained close contact with them to ensure consistency in how families were dealt with.

The priority of the first phase of the contact has been to engage with the families and then to arrange for the return of the samples to them in accordance with their wishes. That process has now been completed in three of the four cases, and I anticipate that the final one will be dealt with by early next week.

It is important to give each family sufficient space and time to come to terms with what is clearly a difficult and upsetting experience for them. We now intend to meet each family, when they feel ready, in order to provide them with an explanation of how we came to retain the samples belonging to their loved one and why, some years later, we still have possession of them. We will also explain what we have done to ensure that, in the future, no other family will be subjected to the same experience.

I am sure that the Committee understands that the families are our primary consideration, and, therefore, I am not in a position to provide as much detailed information as I would have liked because I believe that the families are entitled to be the first to hear the full explanation.

For the purposes of today, however, I can provide the Committee with the following information which has emerged from our internal investigation of the matter. Each sample was lawfully retained at the time of the post-mortem and was a necessary investigative step. Each case has been closed for some time and there is no investigative reason for us to have retained any of the samples. The primary reason for retention beyond an investigative requirement was a flaw in the systems and controls used to manage the movement and storage of such items. I can confirm that today, apart from the samples already discussed, we do not hold any category 3 human tissue.

I can make the following comments with regard to future assurances. The introduction of the Human Tissue Act in 2006 now means that families are provided with information about any human tissue that is retained during the course of an investigation. Since December 2008, we at the Police Ombudsman's office have introduced a new case-handling system which includes a facility for tracking and managing exhibits, using barcoding. In addition, the new system will not allow for a case to be closed until all retained items have been properly accounted for. That was not a requirement in the previous system we operated. All items retained by the office will now be subject to six-monthly audits, and the outcome will be signed off by a senior manager. We will implement all the relevant recommendations made in the ACPO report, and we will seek to be part of any future ACPO audit, as per recommendation 7 in its report.

To sum up, having been made aware of the potential problem, the Office of the Police Ombudsman took immediate and proactive steps to determine whether any human tissue samples had been retained unnecessarily. Having established the facts, contact was made with each of the affected families to provide them with the necessary support. Having investigated the matter, I am confident that the cause has been identified and that robust measures are now in place to prevent a recurrence. I will take any questions.

The Chairperson: Thank you very much. When we received the briefing from the police, news came through that the Ombudsman's Office was making the announcement. Correct me if I am wrong, but your public announcement was made before the families were advised that parts had been retained. Is that correct?

Mr O'Sullivan: That is correct, yes.

The Chairperson: Given that nobody was suggesting that the Ombudsman's Office was involved, do you not think it would have been better to have told the families first rather than making a media statement on it?

Mr O'Sullivan: It was a fine judgement. We were aware of the situation with the police, the fact that the news of what they intended to present to the Committee had emerged early and the fact that they had been unable to speak to all of their families. We felt that it was better to get the information out there and deal with it as quickly as possible.

The Chairperson: The cynic would suggest that you decided very quickly to get the news out while the police were in the frame in the hope that it would all go into the mire as one collective media story instead of deciding to do the right thing by telling the families first and making a statement some days afterwards, when it would have very firmly been a main story.

Mr O'Sullivan: I understand the point that you make, but that was not the case.

The Chairperson: Do you not think, though, that the families should have been told first rather than the media? It was the intention of the police to tell the families before any media comment was made, but events overtook them when the news was leaked. The police did not have that opportunity, but your office did and decided not to avail itself of it.

Mr O'Sullivan: It was our intention to make contact with the families first, but we chose to get the information into the public domain as we felt it was very relevant to the ACPO audit.

The Chairperson: Again, it did not put the families first. I am repeating myself, but you are defending the way in which you acted. I have made the point that the police wanted to tell the families first but did not have the opportunity to do so. You did and decided to put it out there in the public domain through a media statement before the families were made aware of the news. Where does that tally with your commitment to operating with the highest levels of professionalism and integrity in dealing with members of the public. There were four families, and you decided to get the news out through a media statement before you told them. Reconcile that way of dealing with things with your stated objective of operating with integrity.

Mr O'Sullivan: I understand what you are saying, but I assure you that that was not our intention. Our intention was to make sure that the public were kept informed of the overall situation with the retention of human tissue. We had intended to make contact with those families at the earliest opportunity. Unfortunately, because other issues were leaking into the public domain, we felt it was important to get our information out there as well.

The Chairperson: Do you accept that what has happened has damaged confidence in the Ombudsman's Office, along with the police and the state pathologists because of how they have conducted themselves on this issue?

Mr O'Sullivan: I accept that it is not a good news story and that people will have concerns about the way the whole matter has been handled.

The Chairperson: Has the office been brought into disrepute?

Mr O'Sullivan: I think that is for others to judge. I hope that we can recover from this. As I said, it is not a good news story for us.

The Chairperson: Someone in the organisation decided not to inform the families. You do not have the same excuse as the police — culturally, that it was a long-established practice from the 1950s. The office was only established in 2000, so it is a relatively new organisation, and yet it decided to operate in the way that you did. You will be aware that your own code of ethics states:

"any conduct that brings or is likely to bring the Office of the Police Ombudsman into disrepute should be investigated to establish whether or not a breach of the Code has occurred."

Has an investigation taken place to establish whether the code of ethics was broken by anyone in your office?

Mr O'Sullivan: At present, our focus has been on establishing the facts in the four cases to make sure that the families' needs have been dealt with. The finer points can be looked at later.

The Chairperson: Will an investigation be conducted to establish whether your code of ethics was breached?

Mr O'Sullivan: As a natural course, as we work through this, we will identify whether there are any breaches, and we will deal with them.

The Chairperson: You will accept that the Ombudsman's Office was established as a new beginning and to herald a new era in which the police were to be held to the highest standards, the public had the right to complain and the Ombudsman's Office had the right to investigate. As your website tells us, you operate to the highest levels of professionalism and integrity. That has not happened in this case; there has been a failing. If you demand of the police the highest level of integrity and you investigate any officer who does not conduct themselves in the way in which they should, logic dictates that you will investigate the failings in your office.

Mr O'Sullivan: I think we have to look at the context. There is clearly a difference between what happens now and what happened in the past. We are looking at issues that happened between 2002 and 2006. Of course, we have looked back, and we are still looking at some of the finer detail and trying to work out exactly what happened in some of the cases. In general terms, I am satisfied that we know what went wrong in the systems and what needed to be fixed. We fixed that.

The Chairperson: Who knew in the organisation and at what level? Did an officer in the office decide to retain human tissue in those cases? Was it somewhere in the management team? At what level were decisions taken?

Mr O'Sullivan: You would expect the senior investigating officer in each case to have knowledge of what was retained.

The Chairperson: Who would that have been fed through? Was it at the highest level? Were the ombudsman, the chief executive or your senior management directors ever aware that human tissue was retained?

Mr O'Sullivan: I cannot answer that at this time. I would not like to generalise. Each case will be taken on its own merits.

The Chairperson: An investigation, obviously, would tell us that.

Mr O'Sullivan: Potentially, yes.

The Chairperson: I think it is important to know. As an organisation, you are there to ensure integrity, professionalism and the highest ethical standards of the police. Here, you have failed. If we are to have confidence that the ombudsman is able to do their job by holding the police to account, some would say that almost a higher level of integrity is required of the Ombudsman's Office. People will expect the office to go the extra mile, just as we do the police, but I think there is a need for the Ombudsman's Office to really go the extra mile to get to the truth of all this. Can you assure us that that will happen?

Mr O'Sullivan: I will consider your comments and see what we can do with that.

Mr Weir: You mentioned that you were a wee bit restricted in what you could say because you wanted to have full one-to-ones with the relatives. What is the timescale for that process?

Mr O'Sullivan: That will be governed, to a certain extent, by the families. We have worked in phases. The first phase has been the engagement with the families. We have worked through how to ensure that the samples are returned to them in a respectful way and in accordance with their wishes. We will now go back to the families and try to arrange in the near future a briefing with them to explain exactly what has gone on as far as we can.

Mr Weir: You mentioned various steps that were taken to try to make sure that this does not happen again. I think that you said that there was a flaw in the system.

Mr O'Sullivan: Correct, yes.

Mr Weir: People will want to get a degree of assurance that it will not happen again. Although you outlined a range of things that, hopefully, should ensure that that is the case, people will want to know what the flaw was.

Mr O'Sullivan: I do not want to go into too much detail at the moment. In general terms, we had an old computer system that was a first generation of a system. There was no proper tracking system for samples in the computerised system. We now have that; it came in in 2008. Before that, we very much relied on human memory and human checks and balances. Now we have the human element and an IT system to back that up.

Mr Weir: I appreciate what has been said, but, with respect, to have that lack of computer systems or a lack of systems is perhaps a little bit more understandable in a very old organisation, be it the police or whatever. However, it is a little bit disappointing to learn that there are those sorts of flaws in the system of a newly set up organisation. I will leave it at that.

Mr McCartney: I have a number of questions. My first question is about the process. Your statement of May 17, reads:

"When we became aware that the Association of Chief Police Officers was carrying out an audit ... we initiated our own internal audit."

Mr O'Sullivan: Yes.

Mr McCartney: When did you become aware that the audit was being carried out?

Mr O'Sullivan: The ACPO audit?

Mr McCartney: Yes.

Mr O'Sullivan: On 17 April.

Mr McCartney: How did you become aware of that?

Mr O'Sullivan: The police contacted us. They wanted to brief us about the outcome of their element of the ACPO audit.

Mr McCartney: The process was initiated in July 2010. Who should have been responsible for informing you?

Mr O'Sullivan: We are not part of the Police Service. The ACPO audit was about Police Service retention. When the police had completed their work, they came to let us know that there was a possibility that we might get complaints when the issue was made public.

Mr McCartney: Every time we have spoken about this issue, I have said that it is very sensitive. We are dealing with human beings, even though they are deceased.

You retained seven category 3 human tissue samples. Was that the total number of cases you were —

Mr O'Sullivan: It was four cases.

Mr McCartney: That was the total number.

Mr O'Sullivan: Yes.

Mr McCartney: Therefore, in every case that you were dealing with, you took a category 3 piece —

Mr O'Sullivan: No, those were the cases in which there was a need to retain —

Mr McCartney: I am talking about the cases in which there were deaths. You only dealt with four cases in which people were killed. Therefore, in each of those cases, you took a category 3 tissue sample.

Mr O'Sullivan: No.

Mr McCartney: Were there other cases in which you did not take samples?

Mr O'Sullivan: Yes.

Mr McCartney: To go back to the process: were you present at the post-mortems?

Mr O'Sullivan: Not personally, but someone from the office was.

Mr McCartney: Would someone from the PSNI have been present, or would they not have been present because the cases had been handed over to you?

Mr O'Sullivan: If it a death that we have primacy for. So, if it is a death where there was some police involvement, we would be the lead investigators and the police would not be involved at all.

Mr McCartney: OK. Thank you.

Mr Elliott: Thanks for your presentation. I am sorry that I missed the start of it, and if you have answered this, I apologise. The last line of your statements reads that you:

"apologise in full for not having provided them with this information much earlier."

The "them" is the families. Did you mean a few days earlier because of your report or years earlier?

Mr O'Sullivan: I think that we meant years earlier.

Mr Elliott: So, in other words, there is an acceptance that you should have told the families as soon as you were aware that you were retaining the parts? Is that reasonable?

Mr O'Sullivan: Yes. Although there was no legal requirement to do so, I think everybody would agree that, morally, we should have done that.

Mr Elliott: Is there any indication or reason why you did not do that at that stage?

Mr O'Sullivan: Not apart from the fact that it was just not the practice at the time. It was just not the way that things were done then.

Mr Elliott: So, basically you took your practice from other departments or agencies.

Mr O'Sullivan: Yes. We would follow a lot of the practice the police would follow.

The Chairperson: The first time that this happened was in 2001. The first time the Ombudsman's Office engages in such a practice would usually dictate the template, and would lead people to question whether that was the right thing to do. Did that ever happen? Did anyone ever say that this is the first time we will do this and ask what was the right way to do it, legally and morally?

Mr O'Sullivan: I cannot answer that as I was not there then. I would have to go back and see if there is anybody still in the organisation who can remember that.

Mr McCartney: As the Chair pointed out, the police were at great pains to say that they wanted to inform families before it became public, but obviously that did not work out. In your organisation, who decided to handle it in this way? Was there an internal meeting to decide the process?

Mr O'Sullivan: Yes; we as a senior management team got together, looked at the options and chose the course of action that we took.

Mr McCartney: You say the senior management team; was the interim chief executive involved?

Mr O'Sullivan: Yes, he would have been part of the decision-making.

Mr McCartney: Thank you.

Mr Dickson: Apologies for not being in the room earlier. From picking up on what the Chair said a short moment ago, you are really indicating that the practice in the Police Ombudsman's Office with regard to retention was the same as the one applied right across the pathology service and the police. I accept that you were not in office in 2001. However, I think that it would be valuable if we could have access to the office's policy decisions on the retention of samples at that point in time.

It is very difficult to understand — we said this to Professor Crane — why different organisations, although perhaps taking their lead from what the National Health Service (NHS) was doing following events at Alder Hey, with very different reasons for retention — you did not do it for medical research purposes but for potential or actual criminal proceedings purposes — all came to the same conclusion. With hindsight, we are saying today that there should have been a very different conclusion about how you approach the issue of retention and discuss that with appropriate family members. Maybe we are looking at it through 2012 eyes because we know that that is what we would do today. I have to say that it is disappointing that an organisation that was set up to follow best practice just continued to follow a very old practice.

The Chairperson: Mr O'Sullivan and Mr Smyth, thank you very much for coming along. We appreciate it.