



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Retention of Human Tissue and Body Part
Samples: Briefing from the State Pathologist

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
Mr Jim Wells

Witnesses:

Professor Jack Crane The State Pathologist

The Chairperson: I welcome Professor Jack Crane, the State Pathologist for Northern Ireland. The session is being recorded by Hansard and the report will be published on Committee's web page. Professor Crane, I invite you to make some opening remarks. Members will ask question afterwards.

Professor Jack Crane (The State Pathologist): Thank you, Mr Chairman. I will give you some background information on what the Department does and how it operates.

The State Pathologist's Department provides an independent and impartial forensic pathology service to the criminal justice system in Northern Ireland. The Department is also responsible for providing an autopsy service to the Coroners Service for Northern Ireland as well as providing advice and guidance to the Police Service in cases of suspicious death. The Department conducts approximately 1,200 post-mortem examinations annually at the Northern Ireland Regional Forensic Mortuary. The State Pathologist's Department and the forensic mortuary are licensed by the Human Tissue Authority for the conduct of post-mortem examinations and for the retention and storage of tissue taken at post-mortem for scheduled purposes.

I am the designated individual as defined by the Act, and I am responsible for ensuring compliance with the Act. The Department was last inspected by the Human Tissue Authority in October 2011, and the inspectors commended the Department for its approach in dealing with bereaved families. It is worth bearing in mind that the autopsy service provided in Northern Ireland is, in some respects, quite different to that in the rest of the UK. First, routine coronial autopsies are carried out by the State Pathologist's Department not only on weekdays but at weekends and all public and bank holidays. Furthermore, the Department is committed to ensuring that, as far as possible, those examinations are

carried out within 24 hours of the death being reported to the Department by the Coroners Service. The average time from death to post-mortem examination in England and Wales is six days.

Secondly, in cases of homicide, bodies in Northern Ireland are usually released for burial or cremation a few days after the most-mortem examination, whereas in the rest of the UK, the delay in releasing a body in a suspicious death may be up to several months. It is inevitable, however, that, in facilitating early burial or cremation in murder cases, tissue samples and, indeed, some body parts, may need to be retained for further examination and may be required subsequently for evidential purposes. That is done in consultation with the Police Service. However, it is acknowledged that there was no mechanism in place, not just in Northern Ireland but throughout the UK, for that material to be regularly reviewed and audited.

My Department ensures that, in accordance with HTA regulations, families are now informed if tissue samples or body parts are retained in routine coronial cases. Similarly, in cases of suspicious death or homicide, families are informed if material is retained either to assist in the determination of the cause of death or for evidential purposes. My Department is committed to working with the Police Service, the Public Prosecution Service and the Coroners Service to ensure that, in future, retained tissue or body parts are subject to regular audit and that, in those cases where such material is no longer required, families have the opportunity to decide how the material should be dealt with.

I would also like the Committee to be aware that post-mortem examinations carried out by my Department are to the standards set out in the code of practice for forensic pathologists, which was approved by the Royal College of Pathologists, the Home Office and the Department of Justice here in Northern Ireland. The code, which I was partly responsible for writing, places an obligation on pathologists to ensure that appropriate tissue samples, which may be required for evidential purposes, are retained at post-mortem examination. Failure to do so could jeopardise future criminal proceedings.

Finally, I acknowledge that I fully understand that disclosure of information from the audit may have caused distress to the families involved. I apologise on behalf of the State Pathologist's Department for any distress or anxiety that it has caused.

The Chairperson: Professor Crane, thank you very much for that. Members were scribbling because we did not receive an advance copy of a written submission.

I have a couple of questions. You said that the retention is done in consultation with the PSNI and that families are now informed. Is it the State Pathologist's role to inform, or is that very clearly the role of the Police Service or whatever other authority is working with you?

Professor Crane: It is the responsibility of either the Police Service or the Coroners Service. It is done either by the coroner's liaison officer or the family liaison officer of the PSNI. It is not the pathologist's responsibility to inform the families directly.

The Chairperson: OK. You indicated that the code to which you operate makes it very clear that you must retain human tissue after a post-mortem for evidential purposes. When that code was being drawn up, did it ever cross your mind or other people's mind to insert something to ensure that families are made aware of that or to seek consent or at least communication?

Professor Crane: In the new code, which has just been revised, that is made very clear. It is very explicit that there is a responsibility, that families must be kept informed if material is retained, and that there needs to be a mechanism whereby that can be audited on a regular basis.

The Chairperson: So, that is an admission that not having it in the initial code was a failing.

Professor Crane: The difficulty was that, prior to the Human Tissue Act, there was no mechanism whereby that could be done. It was only with the introduction of the Act that it became apparent that there was a gap between cases covered by the HTA and cases that fall outside the HTA, that is, criminal cases and suspicious deaths.

The Chairperson: It is a question that quite a number of people have raised with me. I want to quote what the Minister said in response to a Member's question on his statement. This relates to the role of the State Pathologist when an apology was given by the then Health Minister, Bairbre de Brún, for human organs having been retained for the health service. David Ford said:

"The way in which the state pathologist related health and justice matters is clearly an issue of some concern."

Given that the issue was highlighted in 2002 and an apology was given by the State Pathologist, why did no one in the organisation say, "Right, we have been retaining this for the health service, so maybe we should check if we have been retaining it for the Police Service"?

Professor Crane: The background, as you may be aware, is that, when issues were raised in 2002, a decision was taken that families would not be approached directly to be told whether material had been taken. The policy that was adopted and agreed was to open an enquiry line. Any families who wanted to enquire about tissue having been retained at post-mortem could contact that helpline. We took part in that, and my Department dealt with probably 300 or so calls from families who wanted to know whether tissue had been retained. The helpline remained in operation until the introduction of the Human Tissue Act. There was a publicity campaign at that time to make people aware that, once the helpline closed, any tissue that had been retained in non-criminal cases could be or would be disposed of. There was still no mechanism then for dealing with material that had been taken in criminal cases. Because of that, in 2008, I convened a meeting involving the Director of Public Prosecutions, the Police Service and the Coroners Service, and I highlighted the issue at that time.

The Chairperson: Remind me: in 2002, was it made clear to the public that, for criminal cases, that may have happened for the police, or was the assumption made that it relates to the health service? Those families were clearly not aware that, in cases where they had lost someone, that could have been retained by yourselves without their consent or knowledge.

Professor Crane: The position was that the enquiry line covered all post-mortem examinations, whether they were done by the health service. Indeed, the vast majority were cases that were done either on the instructions of the coroner or because they were suspicious. We had calls from families relating to people who had been killed as a result of the civil unrest and so forth. It was the whole gamut. It was any post-mortem examination, and any family could ring up. The position was that the helpline looked at the case and decided who was responsible for it, so, if it was a health service case, it was passed to the appropriate hospital trust. If it was a case that was done by our Department, it was referred to my Department. The policy was that one of the consultant pathologists — either I or one of my colleagues — would then speak directly to the family, and the family was told what material had been retained, if anything had been retained. It did not matter whether that was a criminal case or a routine coroner's case.

The Chairperson: Why was it left to the public to have to inquire? Why did the State Pathologist's office not say to the government agencies — that is, the police — that you had been routinely retaining people's body parts for that organisation after a post-mortem, and that it should check its records to see whether it had informed the victims? Why was the responsibility put on the public and not the state?

Professor Crane: It was not a decision that I took, but my understanding was that it was felt that a number of families would not wish to have that information and that, therefore, rather than going to families and telling them that material had been retained, the decision was taken that it would be an opt-in process. If families wanted to know that information, they would call the helpline.

Mr McCartney: Thank you for your presentation. At the last session at which the Committee dealt with this issue, we accepted that it was a very sensitive issue, and I know you are dealing with a great deal of sensitivity, particularly with families, but there are a number of questions that I want to pose. Are you satisfied that the figures that are now in the public domain are accurate? The reason why I ask is that the Association of Chief Police Officers (ACPO) spoke about 105 individual pieces of human tissue being retained, yet the information that we are getting is that it is fewer than that. Can you clear up why there is a discrepancy?

Professor Crane: Yes. What you must realise is that it was a snapshot taken at the time of the tissue that was being retained when the audit was conducted. The difficulty is that there is ongoing retention of material. In the case of material that has been retained since 2006, of course, families are aware that that material has been taken.

Mr McCartney: Is that the reason for the difference between 105 pieces and the figure of around 70?

Professor Crane: We did an audit in our Department, and the figure of 70 was correct. That is the number of pieces of tissue that we are retaining.

Mr McCartney: Prior to 2006, would there have been any instances where human tissue was retained, a family was notified, and then it was destroyed, and the family was told that it was being destroyed, or it was given back to them to inter with the rest of the remains?

Professor Crane: Sorry, Mr McCartney, will you say that again?

Mr McCartney: Prior to 2006, was there any situation in which human tissue was retained and then given back to a family to inter with the rest of the remains?

Professor Crane: Yes, and not infrequently. Families could choose whether to have the tissue back or, as happened in some cases, have us deal with it. If the families wanted it disposed of, all that material was dealt with by way of a dedicated cremation. However, in a number of cases, it was given back to the families.

Mr McCartney: Do you have any figures for that?

Professor Crane: I do not have any figures. That is ongoing; it happens to this day. Families have the choice to decide how they want that tissue dealt with.

Mr McCartney: I asked that for a reason. Based on your initial presentation, is it fair to assume that some tissue would have been retained in instances such as a person being killed suddenly?

Professor Crane: That is correct; small tissue blocks would have been taken. That is standard post-mortem procedure. These are postage stamp-sized pieces of tissue for the pathologist to look at under the microscope.

Mr McCartney: How many of those would have been given back to the family in that period?

Professor Crane: The interesting thing is that a very small percentage of families wanted those tissue samples back, and that remains the case today. The vast majority of people do not want the tissue blocks back. However, where larger pieces of tissue were retained, for example part of the heart or something, families tend to ask for those back, and those are returned if no longer required.

Mr McCartney: At the previous evidence session on this subject, it was asked — perhaps in your absence, so this is your opportunity to answer— whether tissue would have been retained and destroyed in your Department without the knowledge of the family.

Professor Crane: As I said, the opportunity for families to make enquiries as to whether a relative had had post-mortem examination and whether any tissue was retained was when the human organs enquiry line came into existence. While the helpline operated, a moratorium on the disposal of any tissue was in place. So, we were instructed not to dispose of any tissue during that period. Similarly, had we got a call from a family that was not sure what it wanted to do, nothing was done with the tissue. Once the Act was introduced, the Health Department issued information that tissue that was being held, where there had been no contact with family, could be disposed of.

Mr McCartney: Without the knowledge of the family?

Professor Crane: Yes.

Mr McCartney: OK.

Professor Crane: Indeed, to some extent, that is still the position today. I say that it is still the position because the default position with the Human Tissue Authority is that, if you contact a family and it says that it wants it back, we arrange that. If we do not hear from the family, it is contacted again. The Human Tissue Authority says that, if you do not hear back within three months, that tissue should be disposed of. I have been reluctant to do that, but the HTA's default position is dispose of rather than retain.

Mr McCartney: Just for clarity: do you have a figure for the number of pieces of human tissue that were retained and subsequently destroyed without the knowledge of the family prior to 2006?

Professor Crane: I do not have a figure, Mr McCartney. It is probably fair to say that we take substantial body parts from only a relatively small number of post-mortem examinations that we conduct. If we take tissue blocks, we retain those indefinitely. They are not disposed of unless that is what the family wants or the family wants them back.

Mr McCartney: So, are there still small pieces of human tissue in your Department from cases stretching back 30 or 40 years?

Professor Crane: Yes. Tissue blocks are routinely retained unless the family wants them back or wants them disposed of. There is good medical reason for that. Tissue blocks form part of the medical record of that individual. So, if a relative of someone who died in 1950 dies today, and someone asks whether those two deaths are linked, there is always the potential that we can try to link them.

Mr McCartney: I am not asking this for anything but information purposes.

Professor Crane: I am just trying to explain why we might keep that.

Mr McCartney: Of course, but from the evidence that I have received, it was never suggested that small pieces of tissue were retained and continue to be retained. The 105 or 70 pieces that we are talking about, and I do not like using those sorts of words, are obviously larger pieces of human tissue or remains.

Professor Crane: The audit dealt specifically with what it termed category 3, which were substantial pieces of body tissue.

Mr McCartney: Category 2 and category 1 would be smaller and evidential.

Professor Crane: Category 2 would tend to be the tissue blocks.

Mr McCartney: And category 1?

Professor Crane: Category 1 may be things such as stomach contents and fingernail scrapings.

Mr McCartney: Thank you very much.

Mr S Anderson: Thank you, Professor, for coming and for your presentation. I will go back to a point that the Chair raised about the enquiry line. Did I pick up that you said there were 300 calls?

Professor Crane: About 300. That is correct.

Mr S Anderson: About 300. Out of how many?

Professor Crane: The department has carried out over 65,000 autopsies since it was created.

Mr S Anderson: Right, OK. The Chair asked why the families had to make the approach, rather than the other way around. Why was that? I want to tease that out. I think you said that maybe some families did not want to partake and go down that line. Is that what you said?

Professor Crane: That was the reasoning behind it. This was a decision taken by the Department of Health, not by me. We were simply told that this was how the matter was going to be dealt with, and we said that we would certainly co-operate with that, rather than simply contact families out of the blue who may not want to know. It is fair to say that the human organ enquiry line was given considerable publicity in Northern Ireland and leaflets were sent to every household in the Province so that they were aware of its existence. However, that decision was taken not by me but by others.

Mr S Anderson: How could anyone form an opinion on behalf of a family? Surely the family would make that decision, not the Department or someone else. It is a flimsy argument to say that the families may not have been interested in a very sensitive family matter. I find that extraordinary to say the least.

Professor Crane: That was the decision taken by the Department of Health at the time.

Mr S Anderson: Can you form an opinion yourself whether there was a failing on behalf of agencies and individuals that made that decision?

Professor Crane: I do not think that I should comment on that. I simply complied with what we were required to do. I certainly made myself available to talk to any family that wanted to talk, at public meetings at the time and, indeed, privately with individual families. We were always available. When the line opened and enquiries came to our department, it was our policy that a consultant pathologist spoke to the family directly. Such enquiries were not passed down to someone in the laboratory or to a secretary — it was a pathologist talking directly to the family. In some instances, families came and met us, and we discussed it. As I say, that was the decision that was taken. Whether it was the right decision or not is not for me to say.

Mr S Anderson: Did any families come along after the disposal of the tissues or body parts?

Professor Crane: Some families were told if material had already been disposed of. However, none came along, that I can recollect, to talk to us directly because material had been disposed of.

Mr S Anderson: None?

Professor Crane: Not that I am aware of.

Mr S Anderson: But there were families who did contact you in relation to this, maybe after the event. No? Is that what you are saying?

Professor Crane: Well, they would ring up and want to know whether any material had been taken, and we would tell them that slides and blocks or part of an organ were taken.

Mr S Anderson: But not disposed of?

Professor Crane: If it had not been disposed of, they then had the choice to decide what they wanted to do with it.

Mr S Anderson: Was there a case where it was disposed of?

Professor Crane: If it had been disposed of they would have been told that. They were simply told —

Mr S Anderson: What was their reaction if that was the case? I am trying to get to the matter of families not being told and it being their responsibility to find out. After the event, however, they were told. What was their reaction to that?

Professor Crane: It is very difficult to generalise. It is fair to say that, when families were told that material had been retained, some were angry and some accepted that it was part of the examination. In hindsight, we all recognise that it would have been a lot better if they had been told at the time, and there is no going back from that. That is why we now have very strict policies in place. What caused most upset was that they had not been told. At the time, I and others, including the Minister, apologised. It was the practice at the time, and we have seen that it was not a good practice. One reason for families not having been told was simply that the doctors at the time felt that that would cause more distress to them. That might have been the attitude in the past. We have learnt that that is not the best attitude. We need to keep families fully involved with what we are doing so that they are aware of what takes place.

Mr S Anderson: It is possibly poor judgement, to say the least, that, instead of the families having to come forward, the agencies responsible did not go to the families to let them know. That was a poor call and poor judgement.

Mr McGlone: Thank you, Professor Crane. I am sorry that I missed your earlier comments; I may go over some stuff that you may have covered. We all know that it is an extremely sensitive issue, particularly for the families. I heard mention that, on occasion, some body parts or tissues could be disposed of. When the police came to the Committee, I raised with Assistant Chief Constable Hamilton an issue that you may have read about or picked up in Hansard. Police investigators who were investigating, in some cases, a potential crime, did not know that some of the body parts existed or were there. Everyone accepts that that is a pretty big breakdown in communication, which may or may not be material in the outcome of some criminal investigations.

If I did not pick you up correctly, I am sure that you will clarify things for me. When a decision was taken to dispose of a body part or hand it back to the family for the choice of burial or whatever method they would choose, were the police notified upon that being done? In some instances, a potential criminal investigation could have been informed. In some instances, police did not know that body parts were wherever they were being stored. If some of those body parts were then disposed of and the police did not know about it, it was almost a double negative situation.

Professor Crane: The reason, perhaps, why the police did not know about some of them was because some related to very old cases. There is no doubt that, at every post-mortem examination, particularly in every criminal case that we deal with, the police are fully aware of what we are doing and why we are taking something. They are told. A simple example is that, if someone is hit over the head with a hammer, we may need to keep part of the skull, because we may need to reconstruct it to see whether we can work out the size of the implement that was used to strike the blow. The police are fully aware of that. In those cases, the decision on whether that material needs to be retained rests, essentially, with the police. The only circumstance where that material might be disposed of is if the police were content that it was no longer required. In some instances, the police did come back to us and say that the material was no longer required. Therefore, there were cases, including some of the older cases, where the family were told that something had been retained and, after a prosecution, the police told us that the family would like it back. The difficulty was that, in a lot of cases, that mechanism did not occur.

Mr McGlone: You said that some of them were very old cases. Some may not have been — I do not know; you will be more privy to that type of information. I will read out to you what Assistant Chief Constable Hamilton said when I questioned him on that point:

"The fact that investigators did not know that items of human tissue had been retained for investigative purposes and, therefore, could not exploit that investigative opportunity begs a question and is slightly concerning."

Do you agree with the conclusion that he has drawn?

Professor Crane: I cannot see how they did not know, because the police are present at the examination and know exactly what has been retained.

Mr McGlone: Those are not my words; those are his words. Do you accept that, that being the case, it is probably even more disconcerting in terms of the potential to elicit information and to further progress an investigation?

Professor Crane: If it was a suspicious death and the pathologist had retained material that was of evidential value, we would not have the authority to dispose of that unless we got that authority from the police. We would not take it upon ourselves to dispose of that material under any circumstances, and that is why, in some cases, material dates back quite a long time. The pathologist would not take the decision to dispose of material in a criminal case unless we had the authority to do so.

Mr McGlone: I presume that some of the cases may have been criminal investigations. Were the police notified about occasions on which body parts were being disposed of — or about to be disposed of — before 2006? The next bit is probably a question for the police, but did that then trigger a follow-up investigation if the police were unaware that the body parts were there?

Professor Crane: At the time of the initial investigation, the police would be aware of what was being retained. As you know, old cases are sometimes reviewed by the Historical Enquiries Team, and when cases are being reinvestigated, I presume that the new investigators will be unaware of what

has been retained. In a number of cases, they have come to us to ask whether we have material that may be of value, and we are able to tell them what we have retained, whether, per my previous example, it is a piece of a skull, etc. The new investigators may not be aware of it, but we can tell them whether we have retained material.

Mr McGlone: Is that the practice now?

Professor Crane: That is the practice, and we have had a number requests from the Re Murder Investigation Team (ReMIT) and the Historical Enquiries Team to ask what we hold. Even the tissue blocks, for instance, can be of value because, in some older cases, there was no ability at the time to carry out DNA analysis. The only tissue that is available is the tissue that we have, and they can use that to extract DNA. The fact that a case is very old does not mean that the material may not still have some evidential value.

Mr Dickson: Thank you, Professor Crane, for your comments so far. Essentially, until the Alder Hey hospital inquiry, it was common practice across the NHS and your own service not to disclose to people what was being retained.

Professor Crane: I do not think that it was a deliberate policy not to do it. It just was not done, and that was just the practice. We understand today that that was not good practice.

Mr Dickson: I can perhaps understand why the NHS did it. Perhaps it was that, from a medical professional perspective, it was a case of "doctor knows best", and they did not want to distress the family. However, in your service, you are dealing with people in a different perspective, potentially, where a crime has been committed. It is easy for you to suggest that there was a blanket way of doing it. It seems somewhat odd that other areas of the medical profession in various areas, such as forensics, did not, when retaining tissue, think in a different way to the health service. That is what I am trying to understand: why did you or your predecessors not have different thought processes? When the Alder Hey situation and other issues arose, did no one stop to think that we should do this as well, and that we need to get our act together?

Professor Crane: That was one of the reasons why, after Alder Hey, we fully agreed to participate in the human organ inquiry line and why we changed our practice, and routinely informed families if material had been retained. The other difficulty that we had as forensic pathologists was that we had no mechanism for direct contact with families, which the hospital doctors had.

Mr Dickson: At that time, was there no thought that, perhaps, you might have a word with the police? Could you not have spoken to Assistant Chief Constable Hamilton's equivalent at the time to say that this was going on in the NHS, and asked him whether he realised that you were retaining similar samples and destroying or keeping some? You could have said that you had not told anyone, although it was perhaps not your job to tell them, and that the police may have had a responsibility. When did that conversation take place?

Professor Crane: That conversation took place in 2008.

Mr Dickson: And yet, Alder Hey was —

Professor Crane: The human organ inquiry line opened in 2001.

Mr Dickson: But you waited until 2008 to have that conversation.

Professor Crane: We waited until 2008 because, at that point, nothing further was being disposed of. The point was that the decision was taken. With respect, it was not my decision. The decision was taken that families would not be cold-called.

Mr Dickson: If it was not your decision, whose was it?

Professor Crane: It was taken by the Health Department.

Mr Dickson: But the Health Department is not responsible for forensic retention.

Professor Crane: No, but because the majority of post-mortems were conducted by my department, the decision was taken and endorsed by the Northern Ireland Office at the time that that was the correct approach, and that any inquiries —

Mr Dickson: Regardless of the category of retention?

Professor Crane: Regardless of the category of retention.

Mr Dickson: What I find most concerning is that those samples were retained for forensic reasons in cases where no one thought either to communicate with the police or that that was not a two-way street, that that conversation did not take place, and, although we were aware from 2001 of those practices, nothing happened until 2008. That is lethargy at best. I hope it is not worse than that.

The Chairperson: I am still trying to reconcile why there was a six or seven-year delay. You said earlier that you took the initiative to contact the police. Why did you not do that back in 2002 at the conclusion of the health service inquiry?

Professor Crane: In 2002, the decision was taken —

The Chairperson: With respect, you are saying that the decision was taken and that it was not your call, but you did not step forward either. You did not volunteer that, morally and ethically, this was wrong and it needed to be dealt with. It would appear that you are washing your hands of it. Someone else took the decision, the Health Department were the lead on it, the NIO was quite happy to sign off on the practice as well, ignorance is bliss, and people were just going to stay silent on the matter.

Professor Crane: No. That is not the case. Once the human organ inquiry line opened, no material was disposed of. The decision was that we would deal with any families that came to us about material that may have been retained. That carried on until 2006, when the Human Tissue Act came into effect.

Mr Dickson: May I briefly interrupt again, Chairperson? There was no proactive approach by you or by the police to inform people. This was all in the public domain. I find it very difficult to understand that the public were required to call you. After all, you were the people who held 300-odd samples and you held the information. Today, through their family liaison officers, the police will sensitively handle this information. Why were they not going out and doing that then?

Professor Crane: I cannot answer for the police, Mr Dickson. In those cases, the police were aware of what material had been retained.

Mr Dickson: It is not just the police, you, or the Health Department. Surely there had to have been some form of multidisciplinary sit-down around a table where someone asked, "How are we going to deal with this?"

Professor Crane: That was the approach that I felt should be taken.

Mr Dickson: Did you ask for a round-table meeting?

Professor Crane: I did organise it in 2008.

Mr Dickson: What happened in 2001 and 2002? Did nobody think of having a round-table meeting then?

Professor Crane: I think that, at that time, a decision was taken —

Mr Dickson: Whose decision?

Professor Crane: The Department of Health took the decision.

Mr Dickson: But you are not the Department of Health.

Professor Crane: The decision was endorsed by the then Northern Ireland Office.

Mr Dickson: You are not the Northern Ireland Office either.

Professor Crane: I was at that time.

Mr Dickson: OK. Who in the Northern Ireland Office endorsed it? Did a civil servant say, "Professor Crane, we are going to do it this way"?

Professor Crane: Yes. The decision was taken that that was how we were going to do it.

The Chairperson: I take it that it was signed off by a Minister.

Professor Crane: I presume so.

Mr McCartney: I have a supplementary to something that Patsy McGlone raised. Have you read the Hansard report from our evidence session with the PSNI?

Professor Crane: I have seen it, yes.

Mr McCartney: It strikes me that the Assistant Chief Constable said, very definitively, that the police were not involved in destroying any human tissue. He said:

"I cannot speak for the department of pathology."

I asked him whether he was making the categorical statement that the Police Service had not done this, and he said yes. However, I am listening to you today, and you have said that the police would have been present at the retention and that you would not have destroyed anything without the say-so of the police. That seems to be at odds with what George Hamilton said.

Professor Crane: The point that I was making was that the police are present at all the post-mortem examinations that we conduct, and they would be aware if material was being retained, because we would explain to them why we had to keep something. If that material was being retained for evidential purposes, we would not have, and still do not have, the authority to dispose of that. We would not dispose of any material that was required for evidential purposes, unless we were instructed to do so by the police.

Mr McCartney: I want to read this out. I put this to the Assistant Chief Constable:

"you could have a scenario where someone can retain human remains and destroy them and still not have to feel that they were legally bound to tell anyone."

The Assistant Chief Constable replied:

"Hypothetically, yes, but I cannot say that that happened, because I simply do not know. It may have happened, but what I can say is that the Police Service has not done that."

That seems to be at odds with what you are saying.

Professor Crane: That material was being destroyed?

Mr McCartney: No. That you would not have done it unless the PSNI, or the RUC as it may have been, approved it.

Professor Crane: Do you mean that we would not have disposed of it?

Mr McCartney: Yes.

Professor Crane: No, we would not.

Mr McCartney: Do you accept that George Hamilton said the complete opposite?

Professor Crane: I do not quite know how he can say that. We could not have done it, because we do not have the authority. That is the reason why the material is still being retained: we have not been given any authority to dispose of it. That is why some of these cases go back some considerable time.

Mr McGlone: For clarity, does the authority to dispose of that come from the family and the police?

Professor Crane: We retain it, if it is required for evidential purposes. If the police come to us and say that particular material is no longer required, what should happen is that the family should be consulted and then make the decision on how they want that material to be dealt with.

Mr McGlone: At this point in time, the police have not contacted you about the disposal or return of any of those body parts to the families, because they no longer require them due to a potential criminal investigation.

Professor Crane: At present, each case for which we have retained material is going to be looked at by a pathologist and by the police. Then, the decision will have to be taken. The pathologist will explain to the police why that material was taken in the first instance. Then they will have to make the decision as to whether they require that material. If they do not require it, the next step is that the police will seek the views of the next of kin.

Mr McGlone: So that process is ongoing?

Professor Crane: Yes. That process has started.

Mr S Anderson: Did you say that the police are present at all post-mortems?

Professor Crane: At every post-mortem we conduct.

Mr S Anderson: You said that the police would be aware if body parts or tissues were retained?

Professor Crane: Yes, that is correct.

Mr S Anderson: How is that recorded? How would they know? Is there anything written down and given to the police or would you just say that you were going to retain a certain —

Professor Crane: Well, we —

Mr S Anderson: Is there a trail of records that the police would have of each body part that is retained, whereby you would have that record and they would have that record, and then if decisions were taken to dispose of that material, the police would also be told? What is the connection here, if any?

Professor Crane: What normally happens is that some of the samples are handed over directly to the police for evidential exhibit. For example, if I took a sample of blood that needs to go to Forensic Science; the police will record that and will give it an exhibit number. If, for instance, I am keeping part of a skull, I will record in my notes at the time that I have taken that, and then simply tell the police that we are taking it and explain why.

Mr S Anderson: So, you are saying that the police would not have anything recorded — that it just depends on the police person who is there at that particular time and it is, more or less word, of mouth.

Professor Crane: When you say it is "word of mouth"; it is all word of mouth in that I am telling the police what I am doing and that I have found a particular sort of injury such as a gunshot wound, and the police take notes of what we have found. That is how we do it —

Mr S Anderson: Maybe that is where a lot of the failure has occurred, because there does not seem to be a proper trail of records between everyone who was involved.

Professor Crane: That was the trouble in the past; you are absolutely right. We now include a schedule of retained material in every report. It is quite clear in our reports what has been kept. At the end of a post-mortem examination, we give the police officer a form, recording everything that we have taken. That form is also transmitted to the coroner, so the coroner is aware of everything that has been taken.

Mr S Anderson: So that is all being done now.

Professor Crane: It is all being done since the Human Tissue Act came into force.

The Chairperson: Finally, do you think that an inquiry into this needs to be carried out?

Professor Crane: There were problems and difficulties in the past; I do not shy away from that. Since 2006, we have had very robust processes for ensuring that families are fully aware of what material is retained at post-mortem, and why it is retained. They are then involved in any decision as to how it is dealt with when it is no longer required. Since the Human Tissue Act came into effect, we have ensured that material will not be retained without people knowing about it. What we do not have at the moment is a mechanism whereby retained material can be regularly audited by the police. That must be put in place. I know that the Minister is very keen to ensure that that occurs and that the recommendations of the audit are taken forward — not just in Northern Ireland, because, as you know, this involves the whole of the United Kingdom.

The Chairperson: If the Minister decided to hold an inquiry, would you co-operate?

Professor Crane: Of course we would. I am not quite sure how a public inquiry would take us forward in any —

The Chairperson: I would not recommend a public inquiry, but I think it is very clear that there have been significant failings. Assumptions have been made by the state to take decisions on behalf of people. The state has assumed rights that never belonged to it, and we are now living with the consequences of that. Worse still, in 2002, we had an apology from your organisation, which, six years later, decided to convene a meeting with the police to discuss this issue that we are dealing with today. Now, something went wrong. I think an inquiry would get to the bottom of why it went wrong, and then we can have confidence that it will not happen again. Ultimately, those practices still are not legally binding on the police. They are operating in the spirit of the law. They do not need to comply with the law. Again, I think we need to have confidence that what has happened in the past will not be repeated. No disrespect to you. You may well say, "We will not get it wrong again", but that has not proven to be the case in the past. So, I think the Minister should be considering an inquiry, but he will make the call on that.

OK, members. Professor, I thank you for your time and for coming to the Committee today.

Professor Crane: Thank you.