



ASSOCIATION OF
CHIEF POLICE OFFICERS



Report on the Police Human Tissue Audit 2010-2012

**Report into the Retention of Human Tissue by
Police Forces in England, Wales and
Northern Ireland**

**Report by the Association of Chief Police Officers and the
National Policing Improvement Agency**

national AGENCY POLICING



Executive Summary

This report publishes the findings of an audit conducted by police forces in England, Wales and Northern Ireland into human tissue held by or on behalf of police following post-mortem examinations.

If a person dies in circumstances which are considered ‘suspicious’ or where homicide is suspected, the coroner will authorise a Home Office registered forensic pathologist to perform a forensic post-mortem examination in order to ascertain the identity of the deceased, the cause and circumstances of death and to allow the collection of evidence. During the post-mortem examination, certain tissue may be removed from the body by the pathologist for the purpose of further investigation such as toxicology, histology and examination by other experts.

These further examinations can sometimes take many weeks to conclude but in the case of significant parts of the body such as whole organs, every effort is made to return them to the body for cremation or burial.

In 2010, it became apparent that human tissue from homicide and suspicious death cases going back many years may have been retained by police following post-mortem examinations. A large proportion of these retentions were made prior to 2006 when the Human Tissue Act 2004 came into force. While the police service is not subject to the provisions of this Act, it was the first time that formal guidance in relation to human tissue was made available to the police.

The Association of Chief Police Officers (ACPO), with the assistance of the National Policing Improvement Agency (NPIA), advised that police forces audit their holdings of human tissue. Forces in Scotland did not participate due to their different legal system.

The audit showed that 492 whole organs or ‘significant’ body parts were held by or on behalf of police in police premises, hospital mortuaries and other establishments. These relate to historical cases, some going as far back as 1960.

Police forces are in the process of sensitively dealing with this human tissue and informing next of kin where appropriate.

In order to place the extent of retention in context, in 2010, there were almost 102,000 coroner authorised post-mortem examinations in England and Wales. Of these, approximately 2,500 were forensic post-mortems. From 1960 to 2010 (50 years), there were in excess of 6.2 million coroner authorised post-mortems of which an average of 2.45% were forensic cases. The identified cases within this report represent less than 0.33% of forensic post-mortem examinations.

The audit may not be complete for many forces as some institutions may yet discover tissue held on behalf of the police. Therefore the figures outlined in this report should be considered as a 'snapshot' only valid at the time the audit was completed.

The following recommendations have been made in consultation with, and are being progressed by appropriate authorities:

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.
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 (when appointed) should agree the process to be followed in consultation with the Human Tissue Authority (HTA).
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.
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.
5. The learning descriptors for the National SIO's training should be amended to include information in relation to human tissue as part of the curriculum.
6. Review of police exhibits held on HTA licensed premises should be included within the regular HTA inspection process with a mechanism for reporting back to the police and the Home Office.
7. Consideration should be given to a further audit in the future, conducted by an appropriate body to ensure that police forces have implemented new policies set out in these recommendations.
8. Forensic pathologists on the Home Office register (Home Office Pathologists) and the State Pathologists in Northern Ireland should be fully appraised of the issues raised by this audit.

9. Samples of human tissue taken by or sent to the defence expert should be subject to the same level of continuity, recording and disposal as all other tissue samples taken by the pathologist at the initial post-mortem examination. Relevant bodies will be consulted as to how this may be regulated in the future.
10. New police guidance on pathology issues, including procedures for dealing with human tissue in suspicious death and homicide cases should be implemented in all forces (currently in draft), and will include: the appropriate powers to seize human tissue, the retention of such material and specific advice on the return of any tissue to bereaved relatives.

Report into the Retention of Human Tissue by Police in England, Wales and Northern Ireland

1. Introduction

1.1 This report concerns the audit by police forces in England, Wales and Northern Ireland of human tissue holdings from the deceased following the police investigation of suspicious death and homicide cases. It outlines the reasons for this audit, the findings from police forces and makes recommendations for the future process of how human tissue should be dealt with.

1.2 If a person dies in circumstances which are considered 'suspicious' or where homicide is suspected, the coroner will authorise a Home Office registered forensic pathologist (or a State Pathologist in Northern Ireland) to perform a forensic post-mortem examination in order to ascertain the identity of the deceased, the cause/circumstances of death and to allow collection of evidence. During the examination, certain tissue may be removed from the body by the pathologist for the purpose of further investigation such as toxicology, histology and examination of organs by other experts.

1.3 These further examinations can sometimes take many weeks or even months to obtain opinions for a variety of reasons, but in the case of significant parts of the body such as whole organs, every effort is made to return them to the body for cremation or burial.

1.4 In 2010, it became apparent that human tissue from homicide and suspicious death cases going back many years may have been retained by police following post-mortem examinations.

1.5 On 5 July 2010, Debbie Simpson (now the Deputy Chief Constable of Dorset Police) in her capacity as ACPO lead for forensic pathology wrote to all Chief Officers of police in the United Kingdom requesting that they audit human tissue retained following suspicious death and homicide cases.

1.6 The purpose of the request was to:

- Identify whether this was a local or national issue;
- Identify the scale of the material held;
- Rectify as far as was possible any issues that arose from the audit; and
- Produce guidance as to how police forces should deal with human tissue in the future.

2. Background

2.1 In the summer of 2009, the Human Tissue Authority (HTA) conducted a series of inspections at mortuary facilities which led to the temporary suspension of the post-mortem examination license at one major city hospital. One of the issues identified related to the significant quantity of tissue on site. Following a 'Regulatory Alert' to the post-mortem sector in December 2009, the HTA issued 'Directions' in April 2010 instructing licensed mortuary facilities in England, Wales and Northern Ireland to conduct an audit of tissue holdings. As part of the audit, mortuaries were required to check that tissue samples obtained after the commencement of the Human Tissue Act 2004 (in September 2006) were being held with appropriate authority, i.e. from the police or the coroner.

2.2 It became apparent that there was a lack of nationally agreed processes at the conclusion of a homicide or suspicious death investigation to ensure that human tissue is dealt with in an appropriate and timely manner.

2.3 This issue was then brought into focus by West Mercia Police, which had coincidentally discovered a number of items of human tissue in a local hospital. The hospital in question invited West Mercia Police to review the material in advance of a Human Tissue Authority audit.

2.4 The presence of this material was investigated thoroughly by West Mercia Police and the material fell broadly into three categories;

- Material the provenance of which could not be properly ascertained;
- Material which was seized under police or coronial powers at the post-mortem examination in connection with a suspicious death/homicide and was no longer required for a criminal justice purpose; or
- Material which was relevant to an ongoing undetected homicide investigation, or subject to appeal or other ongoing process.

2.5 West Mercia Police established which items of material were to be retained and that the vast majority was no longer required. However, the question of disposal presented a dilemma. Should the police inform the next of kin of the deceased person of the existence of the material to allow them an opportunity to dispose of it according to their wishes, or would the act of informing them cause a disproportionate amount of upset and distress to families?

2.6 In order to guide this inquiry, West Mercia Police set up an oversight group headed by an Assistant Chief Constable. The group consisted of the police, National Health Service, coroners and other interested parties including, the forensic pathology section within NPIA.

2.7 It was determined that each item of tissue had to be individually investigated to discover the context of its seizure and ongoing value to the Criminal Justice System (CJS). A decision had to be reached in respect of whether to inform next of kin on a case by case basis bearing in mind the overall circumstances of the case, the health of the relatives and other factors.

2.8 Prior to informing relatives, it was suspected that this issue probably affected other police forces in the country and so an approach was made to ACPO via the NPIA suggesting that a nationwide audit of police holdings of human tissue be conducted.

2.9 All forces agreed to conduct the audit with the exception of the Scottish forces. The reason why the Association of Chief Police Officers in Scotland (ACPOS) did not wish to participate in the audit was that evidence in Scottish criminal cases is held on the authority of the Procurator Fiscal and not the police. The Crown Office and Procurator Fiscal Service were informed of this audit.

2.10 In order to assist forces with the audit and to try to provide some consistency to the process, a guidance document was provided. This included a decision making guide to promote consistency of approach.

2.11 Police forces were asked to audit human tissue held in respect of the following criteria:

- Significant body parts including organs, limbs etc. (later referred to as Category 3 material) which were
- Taken during a post-mortem following a suspicious death/homicide, normally where a Home Office Registered pathologist is employed for the purposes of a police investigation – under police powers (not coroners cases); and
- Items identified during the course of the audit as being no longer required for a criminal justice purpose.

2.12 Due to the size and complexity of this process, a cut off date of 31st March 2012 was established. Freedom of Information (FOI) Act requests were deferred under Section 22 of

the FOI Act which means that information need not be supplied immediately if it will be published in future. This is because it was felt that to disclose to the media details of the audit

results before family and loved ones were informed would cause disproportionate distress and would not be in the public interest.

2.13 The audit may not be complete for many forces as some institutions may yet discover tissue held on behalf of the police. Therefore the figures outlined in this report should be considered as a 'snapshot' only valid at the time the audit was completed.

3. National Oversight

3.1 A national strategic group of interested multi-agency parties known in police parlance as a 'National Gold Group' was set up and chaired by DCC Simpson. The audit itself was overseen and administered by the forensic pathology section within the Police Science and Forensics Unit of NPIA whose role was to:

- Advise and produce guidance on issues encountered during the audit;
- Act as a central referral for issues connected with forensic pathologists;
- Collate and disseminate the media strategy;
- Co-ordinate the family liaison strategy;
- Centrally collate audit results at the end of the audit process;
- Produce a final national audit report with appropriate recommendations; and
- Brief Government Ministers.

3.2 The Gold Group consisted of representatives from ACPO, NPIA, Coroners Society, Crown Prosecution Service (CPS), forensic pathologists, police, HTA and the Home Office and had the following Terms of Reference:

- Undertake an assessment of the current position of each force in respect of the holding of human tissue as a result of suspicious or unexplained death inquiries;
- Ensure adequate stakeholder engagement between police forces, CPS, HTA, local authorities, NHS and coroners;
- Co-ordinate the response and findings from forces;
- Provide direction to forces to ensure they address any needs for compliance with relevant legislation and provide support for any identified areas for improvement;
- Sensitively oversee the management of any impact on families and communities;
- Agree and co-ordinate the implementation of a communication strategy;
- Ensure a consistent UK-wide media strategy;
- Identify priorities for improvement to ensure organisational learning; and

- Ensure that Ministers are kept informed of the work of the Gold Group in the form of ACPO Ministerial Briefings.

3.3 Forces were also urged to set up their own multi-agency Gold Groups with consideration of the following membership:

- An appropriate Chairperson – potentially ACPO or Chief Supt level;
- Police investigation lead at Senior Investigating Officer (SIO) level;
- Local authority Chief Executive (responsible for the funding of the coronial service);
- NHS – either at local Trust level or at a Strategic Health Authority level;
- CPS (PPS in Northern Ireland);
- Forensic Pathologists;
- Local mortuary HTA licence holder;
- Her Majesty's Coroners;
- Individual specialists or forensic providers where appropriate;
- Media representatives from each authority for a joint media strategy;
- Lawyers from each authority; and
- Family Liaison Officer (FLO).

3.4 The following Terms of Reference were suggested for in force Gold Groups:

- To maintain the confidence of the relatives and the wider community in the multi-agency response to the issues associated with human tissue retention;
- Where material is judged to be no longer required, to dispose of this material in a dignified manner;
- Consider the legal, moral and ethical implications associated with further retention or disposal of the material. Specifically, the moral and ethical issues associated with informing and involving the relatives/next of kin;
- Develop a multi-agency communication strategy;
- Refer any prima facie evidence of misconduct to the relevant agency for appropriate consideration;
- Seek to inform the national position in an effort to establish a consistent approach;
- Maintain a cohesive multi-agency approach; and
- To identify any lessons and implement improvements.

4. The Law

4.1 The law in the area of post-mortem examination practice and collecting and retaining forensic samples from the body of deceased persons is complex. It involves primarily the following statutes and regulations:

- Human Tissue Act 2004
- Coroners Rules 1984 (as amended)
- Coroners Act 1988
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Common Law

4.2 From 1 September 2006, the relevant provisions of the Human Tissue Act 2004 came into force in (England, Wales and Northern Ireland) and brought with them strict codes of practice within all sectors that have any responsibility for human tissue. The Act established the Human Tissue Authority which regulates the removal, storage and use of human tissue. Section 39 of the Act provides exemption for human tissue taken for a criminal justice purpose, for instance taken by the police investigating a suspicious death.

4.3 A summary of the relevant law is included at Appendix A.

5. The Audit Process

5.1 The audit related to human tissue holdings from deceased persons only, and not to human tissue obtained by consent or seized under police powers from the living (such as DNA swabs from arrested persons and blood/urine from suspected drink drivers for example).

5.2 The police and police premises are not generally licensed for storage of human tissue, and human tissue taken for criminal justice purposes is specifically excluded from the key provisions of the Human Tissue Act 2004. However other organisations holding human tissue on behalf of the police may be so licensed and will be subject to the licensing provisions of the Act.

5.3 The audit process was divided into three stages as follows:

- 1) Identify the extent of human tissue held by the police;
- 2) Investigate the provenance of each item of tissue; and
- 3) Sensitively dispose of material no longer required for a coronial or criminal justice purpose.

6. Stage 1 – Identify

6.1 Forces were advised that their audit should extend beyond police storage facilities within forensic laboratories and may include hospitals, council run mortuaries, forensic providers and any other location where material could be stored.

7. Stage 2 – Provenance

7.1 There were a significant number of factors that needed to be considered and documented when identifying how and why an item of tissue had been retained. This included whether the material was still required for a criminal justice purpose, such as an ongoing investigation, appeal, complaint or other valid reason for retention.

7.2 Some of the material held by police forces related to undetected homicide cases and cases where convicted persons were serving sentences in prison. It was therefore essential not to inadvertently authorise the disposal of these items where there may be further investigative opportunities or where retention should continue under the Criminal Procedure and Investigations Act 1996 (see Appendix A).

7.3 The process of establishing case details was in some instances difficult, especially for those which pre-dated computerised crime recording systems.

7.4 Simply disposing of the items without individual consideration of each case risked the disposal of evidence that could now challenge historical cases where suspects may have been wrongly acquitted as well as wrongly convicted.

7.5 A strong steer was given by the Gold Group against simple destruction without consideration of the wider implications.

8. Stage 3 – Sensitive Disposal

8.1 It is important to appreciate that the retention of some items of human tissue is an inevitable consequence of a post-mortem examination. For example, a brain sent for neuropathological examination may have tissue samples retained from the examination process.

8.2 The police service having collected and appropriately disposed of the tissue will sometimes be unaware that these sub-samples may have been retained.

8.3 Sometimes this material may have been obtained for testing by the defence, particularly at a defence or 'second post-mortem examination'. This process properly allows the defence to test and challenge prosecution scientific/pathological evidence. Tissue held by experts acting for the defence was not within the scope of this audit, however there appears to be limited guidance to properly control material sent to or taken for pathological examination by experts acting on behalf of the accused. All Home Office registered pathologists have been informed that they must not send material to defence experts without the authority of the CPS or the police.

8.4 The Human Tissue Act 2004 refers to 'relevant material' which includes material, other than gametes, which consists of, or includes, human cells. This would therefore include the smallest samples as long as they contain human cells, although this does not include embryos outside the human body, or hair and nail from the body of a living person. This definition means that 'blocks and slides' (minuscule samples preserved within a preservative or upon a glass microscope slide) contain human tissue and thus did initially come within the parameters of this audit; however it soon became apparent during the audit process that the task of identifying them was impractical and disproportionately resource intensive.

8.5 Therefore a system of categorisation was used following guidance laid out in a document published by the Home Office entitled; '*Legal issues relating to forensic pathology and tissue retention – Police and Coroners approach to forensic pathology*'.

(http://www.hfa.gov.uk/db/documents/Police_and_Coroners_Approach_to_Pathology.pdf)

8.6 This document was produced in response to the Human Tissue Act 2004. It refers to the processes that should be considered in cases that post date the Act's implementation in September 2006. It also provides a platform on which to base decisions with regards to disposal of human tissue samples.

8.7 Most notably Annex 1 to the Home Office document provides advice on how to categorise samples of human tissue that have been retained and specific guidance on disposal processes; it is summarised below.

DISPOSAL OF MATERIAL HELD ON THE AUTHORITY OF THE POLICE

Samples of relevant material taken and/or retained under the authority of the police are not subject to the provisions, with regard to disposal, of the Human Tissue Act 2004. It follows that the police are not obliged to follow the guidance on disposal set down by the Human Tissue Authority.

The police are subject to requirements with regard to the retention of evidence which result in material being held for far longer periods than would be the case in medical or

coroner's retention. An approach must therefore be adopted that (a) allows an effective means of dealing with retained evidence, (b) does not place an undue burden on police resources and (c) respects the wishes of the family of the deceased. It is also necessary to realise the material may be held for a considerable period and it may be inappropriate to return material to the family after such a period.

Material held by the police can be divided into three classes or 'categories':

Category 1 - *Material taken at the post-mortem examination which would not generally be considered part of the body (e.g. scrapings, fingernails, hair, stomach contents.)*

Category 2 - *Samples of human tissue which are not a significant part of the body (e.g. small tissue samples, blocks slides etc); and*

Category 3 - *Samples of human tissue that incorporate a significant part of the body (e.g. 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 by incineration.

In relation to the disposal of material, the Home Office document suggests advice in respect of each category of material. In relation to Category 3 material, the following is advised:

Category 3

- *If disposal is within 5 years of the post-mortem examination and the family are still contactable they should be contacted and an offer of return made.*
- *After 5 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 in suitable circumstances. In the event that material is to be returned to the family it would

be sensible to advise the family of any risks involved and suggest that the return be handled through an undertaker.

Where the family have made it known they want the material to be disposed of or retained/used for research it should be disposed of by cremation. It may not be considered appropriate to allow police exhibits to be used for research etc in light of possible interest. However use by forensic pathologists may be justified.

Where the family have not expressed a wish the material should be dealt with as if they had sought return.

If the family is not contactable or it is not appropriate to return the material (i.e. the family have been convicted) then the material should be disposed of by cremation.

General

In Paragraph A27 of the Human Tissue Authority Code of Practice – (The Removal, Storage and Disposal of Human Organs and Tissue Code 5, July 2006), ‘incineration’ is used to cover the manner by which, for example, a hospital would dispose of tissue but done in a suitably respectful manner and not mixed with clinical waste. However, it is not necessary to deal with each exhibit separately.

The term cremation suggests cremation through an undertaker. It is not envisaged a religious ceremony should occur as it is unlikely that the religion would be known for certain and an inappropriate ceremony would cause more offence than none. The ashes should be spread in the garden of remembrance at the crematorium.

8.8 The appropriate course of action when the material is no longer required would depend on the category of material.

8.9 Category 1 material was not considered for the purpose of the audit although some data was submitted by forces. Category 2 material was also eliminated from the audit because of the large volume of blocks and slides, in particular, stored throughout the country going back many years. This decision was made by the Gold Group which considered that the volume of work entailed in recovering this material (time which is paid for from the public purse) outweighed the value to families of discovering minuscule samples of tissue relating to their loved ones. Again, some initial data was received from forces prior to the decision to discount Category 2 material.

8.10 The audit therefore was concerned with Category 3 material, i.e. whole organs and significant pieces of tissue. No definition was made of 'significant material', this being left to forces on a case by case basis.

8.11 Forces were advised to take particular care to consider religious and cultural issues and it was suggested that an equality impact assessment of their procedures in relation to the audit were completed in consultation with force diversity teams.

8.12 Forces were asked to decide whether to retain material for a further reason or to dispose of it. In either case a decision was required as to whether to inform the next of kin.

8.13 The question forces were presented with was the appropriateness of tracing a family of someone that died perhaps many years ago and advising them that human tissue and whole organs have been retained for that period without their knowledge or consent. Is it appropriate not to tell them?

8.14 The true role of the Family Liaison Officer does not lend itself to the process of giving notification to a family that human tissue has been retained from a relative, however a clear family liaison strategy was required. The NPIA family liaison advisor at the Specialist Crime Operational Support Unit and the experience of West Mercia Police were invaluable in advising forces in this regard.

9. Audit Outcomes

9.1 The audit was comprehensive and forces expended a great deal of resource and time into its completion.

9.2 The overall figures of Category 3 material identified in the course of the audit divided into forces are as follows:

| Police Force | Category 3 material |
|--------------------------|----------------------------|
| Avon & Somerset | 2 |
| Bedfordshire | 16 |
| British Transport Police | 25 |
| Cambridgeshire | 35 |
| Cheshire | 8 |
| City of London | 0 |
| Cleveland | 2 |

| | |
|---|----|
| Cumbria | 0 |
| Derbyshire | 5 |
| Devon & Cornwall | 19 |
| Dorset | 12 |
| Durham | 9 |
| Dyfed Powys | 0 |
| Essex | 0 |
| Gloucestershire | 2 |
| Greater Manchester | 14 |
| Gwent | 0 |
| Hampshire | 20 |
| Hertfordshire | 1 |
| Humberside | 0 |
| Independent Police Complaints Commission (not a police force) | 4 |
| Kent | 3 |
| Lancashire | 15 |
| Leicestershire | 7 |
| Lincolnshire | 3 |
| Merseyside | 37 |
| Metropolitan Police | 39 |
| Norfolk | 6 |
| North Wales | 1 |
| North Yorkshire | 0 |
| Northamptonshire | 1 |
| Northumbria | 0 |
| Nottinghamshire | 2 |
| Police Ombudsman for Northern Ireland (not a police force) | 7 |
| Police Service of Northern Ireland | 71 |
| South Yorkshire | 11 |
| South Wales | 0 |
| Staffordshire | 0 |
| Suffolk | 8 |
| Surrey | 0 |
| Sussex | 0 |
| Thames Valley | 0 |
| Warwickshire | 4 |
| West Mercia | 26 |

| | |
|----------------|------------|
| West Midlands | 40 |
| West Yorkshire | 31 |
| Wiltshire | 6 |
| | |
| TOTAL | 492 |

9.3 The task of identifying material was complex. In order to ensure that the audit results were as accurate as possible, all force ACPO teams were asked to verify the Category 3 results. In spite of the robustness of the approach adopted by the Gold Group, it is accepted that the audit results presented within this report can only be a 'snapshot' at the time the audit was submitted. Police holdings will fluctuate with time as material is reunited or disposed of and as new suspicious death/homicide cases occur and material is taken at post-mortem examinations on a daily basis.

9.4 In order to place the extent of retention in context, in 2010, there were almost 102,000 coroner authorised post-mortem examinations in England and Wales. Of these, approximately 2,500 were forensic post-mortems. From 1960 to 2010 (50 years), there were in excess of 6.2 million coroner authorised post-mortems of which an average of 2.45% were forensic cases. The identified cases within this report represent less than 0.33% of forensic post-mortem examinations.

9.5 Category 1 and 2 items of tissue were not considered within this audit and the decision as to whether a sample is a Category 2 or 3, although obvious in the majority of cases, is subjective.

9.6 Guidance was given by the NPIA in an attempt to standardise the whole process and decision making.

9.7 492 items of material were Category 3. These date back to 1960 although some museum pieces not included in the audit were identified going back to the 19th century.

9.8 Tissue was found predominantly within in-force storage facilities at Scenes of Crime offices, NHS mortuaries and with specialist neuropathologists and forensic pathologists. A small amount was found at public mortuaries.

10. Conclusion

10.1 The significant ethical and moral obligations such as described within this report cannot be underestimated. The police service has taken this matter extremely seriously and placed a great deal of effort into resolving, as far as possible, the issues identified.

10.2 It is clear that at the end of an inquiry into a suspicious death, police investigators may have wrongly assumed that the human tissue seized at the post-mortem examination had been disposed of by the medical profession or by some other means. It would appear that there has been no nationally agreed policy to deal with such items at the conclusion of the investigation and criminal justice process. It is important to point out that many of the samples found during this audit pre-dated the Human Tissue Act 2004 at a time when there was less understanding of public concerns about retained human material.

10.3 Any decision to dispose of human tissue will be addressed by an individual force or associated multi-agency partnership in line with this guidance, however the audit has prompted the writing of national guidance to prevent the issues identified within this report from reoccurring.

The following recommendations have been made in consultation with, and are being progressed by appropriate authorities:

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.
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 (when appointed) should agree the process to be followed in consultation with the Human Tissue Authority (HTA).
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.
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.
5. The learning descriptors for the National SIO's training should be amended to include information in relation to human tissue as part of the curriculum.

6. Review of police exhibits held on HTA licensed premises should be included within the regular HTA inspection process with a mechanism for reporting back to the police and the Home Office.
7. Consideration should be given to a further audit in the future, conducted by an appropriate body to ensure that police forces have implemented new policies set out in these recommendations.
8. Forensic pathologists on the Home Office register (Home Office Pathologists) and the State Pathologists in Northern Ireland should be fully appraised of the issues raised by this audit.
9. Samples of human tissue taken by or sent to the defence expert should be subject to the same level of continuity, recording and disposal as all other tissue samples taken by the pathologist at the initial post-mortem examination. Relevant bodies will be consulted as to how this may be regulated in the future.
10. New police guidance on pathology issues, including procedures for dealing with human tissue in suspicious death and homicide cases should be implemented in all forces (currently in draft), and will include; the appropriate powers to seize human tissue, the retention of such material and specific advice on the return of any tissue to bereaved relatives.

APPENDIX A

Summary of the Law relating to Human Tissue taken at post-mortem

Human Tissue Act 2004

From 1 September 2006, the relevant provisions of the Human Tissue Act 2004 came in to force and brought with it strict codes of practice within all sectors that have any responsibility for human tissue. The code of practice is regulated by the Human Tissue Authority.

Section 39 of the Act specifically excludes human tissue taken for criminal justice purposes;
Criminal justice purposes

(1) *Subject to subsection (2), nothing in section 14(1) or 16(2) applies to anything done for purposes related to—*

- (a) *the prevention or detection of crime, or*
- (b) *the conduct of a prosecution.*

(2) *Subsection (1) does not exempt from section 14(1) or 16(2) the carrying-out of a post-mortem examination for purposes of functions of a coroner.*

(3) *The reference in subsection (2) to the carrying-out of a post-mortem examination does not include the removal of relevant material from the body of a deceased person, or from a part of the body of a deceased person, at the first place where the body or part is situated to be attended by a constable.*

(4) *For the purposes of subsection (1)(a), detecting crime shall be taken to include—*

- (a) *establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed, and*
 - (b) *the apprehension of the person by whom any crime was committed;*
- and the reference in subsection (1)(a) to the detection of crime includes any detection outside the United Kingdom of any crime or suspected crime.*

(5) *In subsection (1)(b), the reference to a prosecution includes a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.*

(6) *In this section, references to crime include a reference to any conduct which—*

- (a) *constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom),*
- (b) *is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, or*

(c) constitutes one or more service offences within the meaning of the Armed Forces Act 2006.

In summary, the Human Tissue Act 2004 creates a number of offences, including:

- Removing, storing or using human tissue for Scheduled Purposes without appropriate consent;
- Storing or using human tissue donated for a Scheduled Purpose for another purpose;
- Undertaking licensable activities without appropriate authorisation;
- Possession of bodily material with the intention of obtaining a DNA profile without qualifying consent; and
- Commercial dealings in human material for transplantation

The police service can in most cases rely on the exemption provided by Section 39 of the Act and will not commit an offence. Because the key offences created by the Act can only be committed in respect of material retained for a 'scheduled purpose' it is likely the police service shall be excluded from committing any offence since a criminal investigation, even though no longer active, is not a scheduled purpose. However, if, on conclusion of the investigation, tissue samples continue to be stored for purposes other than criminal justice purposes, with the intention that they might be used for one of the scheduled purposes set out in the Human Tissue Act 2004, this would be unlawful.

The police service usually only has responsibility for the management of human tissue following a post-mortem examination process if material is taken using police powers. Clear guidance on the requirements in relation to the post-mortem examination is provided in the Human Tissue Authority (2009) Code of Practice 3 – Post-Mortem Examination.

Available at

http://www.hfa.gov.uk/legislationpoliciesandcodesofpractice/codesofpractice/code3post-mortem.cfm?FaArea1=customWidgets.content_view_pdf&cit_id=680.

See also Legal Issues Relating to Forensic Pathology and Tissue Retention at;
http://www.hfa.gov.uk/db/documents/Police_and_Coroners_Approach_to_Pathology.pdf

Coroners Act 1988

Post-mortem examinations generally fall into three categories:

- Hospital examinations conducted with the consent of the next of kin and are generally in order to identify issues in connection with the treatment and circumstances of death within a hospital environment (not covered by the Coroners Act);

- A post-mortem authorised by the coroner under Section 19 of the Coroners Act 1988 for the purposes of establishing the identity of the deceased, the cause and surrounding circumstances of death where the death is not violent or unnatural (no suspicious circumstances). This may obviate the need for an inquest (*i.e.* because the death was from entirely natural causes and there are no other circumstances for there to be reasonable cause to suspect that the death was violent or unnatural); and
- A post-mortem authorised by the coroner under Section 20 of the Coroners Act 1988 for the purposes of establishing the identity of the deceased, the cause and surrounding circumstances of death where there is reasonable cause to suspect that deceased died in violent or unnatural circumstances (*e.g.* where a crime is suspected).

Human tissue samples may be preserved following a post-mortem examination from the body of the deceased under powers of the coroner if the pathologist advises that they may assist identification or bear on the cause of death. However for cases where there is a police investigation into a suspected crime, Section 19 of the Police and Criminal Evidence Act 1984 (PACE) (Section 21 of Police and Criminal Evidence (Northern Ireland) Order 1989) can be used to seize evidence which includes human tissue.

The coroner has responsibility to inform a “properly interested person” (which includes a member of the family) about the preservation and to offer options about how human tissue so obtained should be disposed of. There are no such requirements for the police where items have been seized under police powers, however one might expect that information would be passed to the family in the normal course of interaction by the Family Liaison Officer.

Coroners Rules 1984 (as amended by The Coroners (Amendment) Rules SI [2005] No. 420)

Any person who makes a special (*i.e.* a forensic) examination and preserves material for further examination must notify the coroner in writing, identifying the material preserved. The coroner must then inform the person making the special examination of the period for which the material is to be preserved for the coroner’s purposes in fulfilling his obligations under the 1988 Act. The coroner must also notify certain individuals (including a family member) of the fact that material has been preserved and offer options as to the eventual disposal of the material retained. These rules are set down in the 2005 amendment to the Coroners Rules 1984, rule 12 and 12A.

Therefore, the family should always have been informed since the Rules became operational (in June 2005). All Home Office registered forensic pathologists have been made aware of this requirement.

Amended Coroners Rule 12A deals with situations where the coroner is notified that a person has been charged with an offence in relation to a death; he must then notify the chief officer of police or DPP of any period for which he (the coroner) requires the material to be preserved.

General

Any human tissue samples that are retained following a post-mortem examination conducted for criminal justice purposes and seized under police powers, are primarily the responsibility of the police service and are completely exempt from the Human Tissue Act 2004. That said, the Home Office and the Human Tissue Authority advise that the principles of the Human Tissue Act 2004 and relevant codes of practice should be followed as closely as possible. Police forces should ensure that the coroner is informed of all material preserved and that families are made aware of this fact.

It is of course quite feasible that any sample could be relevant to the coroner's purposes, the police investigation or both. It is for this reason it is essential that the lawful basis of seizure and retention of every sample taken during a post-mortem examination is accurately recorded in all cases.

It is essential to have:

- A lawful power to seize and retain;
- A lawful purpose to examine; and
- A clear policy to dispose of the human tissue when no longer required.

Criminal Procedures and Investigations Act 1996

There is no lawful power to retain samples without a specified purpose. Human tissue can be retained by police indefinitely as long as the rationale for such retention is lawful and documented. This should normally be recorded within the Senior Investigating Officer's (SIO) policy or decision log. However the police are bound by the Criminal Procedure and Investigations Act 1996 which requires that subject to certain reservations, 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 a crime. This can be as long as 30 or more years.

Police and Criminal Evidence Act 1984

Under Section 19 PACE (Section 21 Police and Criminal Evidence (Northern Ireland) Order 1989), when a constable is lawfully on any premises he can seize anything which he finds on the premises if he has reasonable grounds for believing:

- (i) that it has been obtained in consequence of the commission of an offence; or
- (ii) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (iii) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

The police have a lawful right to be present at a post-mortem examination in accordance with the Coroners Rules 1984 and it therefore follows that they have a right to take tissue samples under this section of PACE.

The police have the power to seize material including "relevant material" as evidence. It is also clear that they have the power to seize material held under the authority of the coroner. The provisions of the Coroners Act 1988, and the Coroners and Justice Act 2009, with regard to retention of material; adjournment of inquests and notification of police of retention periods means it is not essential for the police to seize material required for the coroners purposes of identifying the deceased and establishing the cause of death. However, the simultaneous use of two different systems for retaining relevant material (and other evidence) complicates the process of controlling the material and it is therefore recommended practice that material is seized under police powers. This is a matter for the discussion/ agreement of the police and coroner. (Legal Issues Relating to Forensic Pathology and Tissue Retention, 2012 in draft, Home Office).

Under Section 22 of the Police and Criminal Evidence Act 1984 (Section 24 of Police and Criminal Evidence (Northern Ireland) Order 1989), the police may retain any items seized 'only for as long as is necessary in all the circumstances'.

Paragraphs 7.14 to 7.15 of Code B of the Codes of Practice to the Police and Criminal Evidence Act 1984 contains guidance on the retention of material and states as follows:

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.

Common Law

This audit has shown that many investigations, in particular those dating back several years, failed to accurately record the reason why any individual sample had been taken and specifically what powers were used to seize and retain that sample. This is complicated further by the presence of cases that not only pre-date the Human Tissue Act 2004, but also pre-date the Police and Criminal Evidence Act, 1984. In these cases it is assumed that Common Law was utilised to provide the powers to seize and retain the samples but in the absence of relevant records this cannot be shown.

Common Law powers of seizure still exist and may be relevant where Section 19 of PACE does not apply, for instance where the seizure takes place when not 'in premises'.