



Human Tissue Seizure, Retention and Disposal Procedure

This procedure is part of North Yorkshire Police policy to which all Chief Constable personnel and the functions provided by the Police, Fire and Crime Commissioner are required to adhere.

Statement - Lawful Seizure of Human Tissue in Cases of Suspicious Death and Homicide Cases

Linkages

Documents:

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.

Category 3 Samples of human tissue that incorporate a significant part of the body e.g., organs, limbs etc.

MoU between IOPC and Chief Police Officers

Introduction

In cases where the Police are investigating a suspicious death or a suspected homicide, a forensic post-mortem examination will be required to: -

- Determine the identity of the deceased person.
- Determine the cause and circumstances of the death, and
- Facilitate the collection of forensic evidence to assist in the investigation of the death.

All the above three elements form part of the criminal investigation, albeit the first two elements will also be part of the Coroner's investigation.

By virtue of Section 14 of the Coroners and Justice Act 2009, a Senior Coroner can authorise a post-mortem examination of the body of a deceased person.

In cases where a Coroner is informed by the Chief Officer of Police (in practical terms the Senior Investigator) that a homicide offence is suspected, the Coroner must consult with the Chief Officer of Police about who should make the post-mortem examination (Regulation 12 to the Coroners (Investigations) Regulations 2013 (CIR 2013).

Regulation 13(5)(a) of CIR 2013 allows for a representative of the Chief Officer of Police to be present during a forensic post-mortem examination. In such cases, a Forensic Pathologist on the Home Office Register of Forensic Pathologists should be appointed to conduct the post-mortem examination.

The Home Office registered Forensic Pathologist will conduct a post-mortem examination in accordance with the Code of Practice and Performance Standards for Forensic Pathology.

In order to fully investigate the medical cause of death, the Home Office registered Forensic Pathologist will take samples of tissue and bodily fluids. This may include whole or parts of organs of the body for examination by sub-specialty medical or scientific experts.

Police seizure of human tissue

In the investigation of a homicide or in suspicious death cases, as with all criminal investigations, it is essential that the appropriate lawful power is used to enable the seizure and continued lawful retention of evidence by Police.

The main sources of law relating to powers of seizure of evidence in the investigation of crime by the Police are provided under the Police and Criminal Evidence Act 1984 (PACE 1984) (particularly Section 19) and the common law. Police will rely on their common law powers of seizure when they are not on premises. Note however that the definition of premises in Section 23 of PACE 1984 is broad. It includes 'any place' and in particular vehicles, tents, and movable structures, so in reality, rarely will it be necessary for the Police to rely on their common law powers.

Under Section 19 of PACE 1984, an officer lawfully on premises may seize material which he has reasonable grounds for believing is evidence of an offence and that it is necessary to seize it in order to prevent it being lost, altered, or destroyed.

The Police have a lawful right to be present at a post-mortem examination in accordance with CIR 2013 and it therefore follows that they have a right to take tissue samples under Section 19 of PACE, provided of course that the requirements of this section are met.

It should be noted that while any human tissue samples that are retained during a post-mortem examination conducted for criminal justice purposes and seized under Police powers, are likely to be exempt from the Human Tissue Act 2004 (HTA 2004), the Home Office and the Human Tissue Authority (HTA) recommend that the principles of the HTA 2004 and relevant codes of practice are followed.

In some circumstances, material initially taken by the Forensic Pathologist at a post-mortem examination on behalf of the Coroner may need to be seized as evidence by the Police. Such cases may arise where tissue from a non-forensic post-mortem examination was initially taken for the

purposes of the Coroner, but later information comes to light that leads the Police to believe that they are dealing with a homicide or that the death is suspicious.

In the same way as any other evidence seized by Police under Section 19 of PACE 1984, human tissue can lawfully be retained under Section 22 of PACE 1984. It should be noted that Section 22 of PACE 1984 only applies to human tissue seized under Section 19 of PACE 1984. If human tissue is seized by Police using their common law powers, then their power to retain it is determined by the common law too.

Sections 19 and 22 of PACE 1984 are drafted widely to justify the retention of human material for so long as there remains a compelling criminal justice purpose. Conversely the developed common law Police power of retention of seized items permits them to be retained for the duration of criminal proceedings but for no longer. There is no doubt that the seizure and retention of human tissue either under PACE 1984 or the common law will automatically engage Police obligations of retention and disclosure under the Criminal Procedure and Investigations Act 1996 (CPIA 1996).

Section 23 CPIA directs that where the exhibit is relevant in a Police investigation, the exhibit should be retained for the duration that the person convicted remains in custody.

Therefore, an exhibit can be seized under PACE and the Coroners Act, retained under Section 22 PACE, and subsequently transferred to the retention power of Section 23 CPIA. The Police should always be aware of the power that the exhibits are retained under and policy decisions should be fully documented to reflect this.

When considering the lawfulness of retention, it is important to be able to demonstrate that certain requirements are met, for example: -

- The rationale for retention should be recorded with reference to the test in Section 22 of PACE 1984 (where applicable).
- The lines of authority and decision-maker/s should be clearly defined.
- There should be provision for reasonably regular reviews of the question of retention.

There may be cases in which retention of some samples is virtually indefinite but that should be the result of the application of a test to the particular case which at least some, if not, most cases, results in an end point being reached.

It is important to note that if a forensic post-mortem examination is ordered by a Coroner in circumstances where a criminal offence is not suspected, the powers under PACE 1984 will not be engaged.

Tissue stored for a scheduled purpose must be stored under the authority of a suitable license issued by the HTA. Scheduled purposes include the making of a post-mortem and for research. There are several exemptions from licensing, one of which is the storage of specimens under PACE. The following is taken from the Code of Practice B: Post-Mortem Examinations: -

Section 58 – Although material taken or retained under Police authority only is not subject to the provisions of the HTA 2004, Section 7.8.6 of the Forensic Science Regulator’s guidance ‘Legal issues in Forensic Pathology and Tissue Retention’ advises the Police, where practical, to dispose of the material in compliance with the HTA’s requirements.

Section 59 – Following a Police investigation, the Police will decide as to whether to continue retention of the tissue. If retention is no longer required, the tissue will be offered to the Coroner as it may be relevant to the Coronial inquiry. If the Coroner does not require the tissue, the tissue is immediately under the jurisdiction of the HTA 2004 and must be dealt with according to the wishes of the next of kin. **If the Coroner does require the material, it must then be held on licensed premises.**

North Yorkshire Police do not have a license and therefore arrangements need to be made with the Coroner for samples to be transferred to a suitably licensed establishment.

Once it is established that samples are no longer required for criminal investigation purposes and the SIO has made the decision not to retain them, the Coroner’s Officer must be informed as soon as possible that North Yorkshire Police is holding tissue which is no longer required, offering the samples for Coronial purposes. The Coroner’s Officer will seek to get an answer as to the Coroner’s needs on the same working day.

Should the samples be required by the Coroner then arrangements for the conveyance of samples to a licensed premise will be made by the Coroner’s Officer unless they are already on a licensed premise.

Effectively both the Police and the Coroner have responsibility for this process – the Police, no longer having justification to retain, will have a duty to relinquish control; the Coroner will have an interest in preserving the samples and taking them into his control. The practicalities for moving the samples should be agreed between the OIC/Exhibits Officer and the Coroner’s Officer. This is to take place as soon as reasonably practicable.

Exhibits stored on behalf of the Independent Office for Police Conduct (IOPC)

The IOPC are prohibited from storing human tissues exhibits and are therefore reliant upon police partners to store those exhibits on their behalf.

A memorandum of Understanding for the “Effective exhibit of human tissue samples stored on behalf of the IOPC” is available here for viewing.

Guiding principle

The guiding principle for Police is that if it is deemed by the Senior Investigating Officer (SIO) that the human tissue in question may assist the criminal investigation into the death of the deceased, it should be seized and retained under Police authority using Sections 19 and 22 of PACE 1984 or the common law and not the Coroner’s authority.

The decision to seize and retain human tissue under the Police's authority eliminates the complexities arising from the simultaneous application of two separate systems for seizure and retention decision making, which arises when retained under the Coroner's authority as well as the Police's.

The SIO should also consider (in consultation with the Forensic Pathologist and Crown Prosecution Service (CPS)) whether an image or histological samples would be sufficient when deciding whether to retain human tissue during the Police investigation and for subsequent trial and potential appeal purposes.

The SIO must be prescriptive in relation to the samples that are obtained. The Forensic Pathologist will offer guidance, but as they are working on behalf of the Police, we must ensure that the only samples obtained are those which will further the investigation. This process must not be allowed to obstruct the efficient examination of the Forensic Pathologist, good practice would suggest agreement at the briefing prior to the examination of what might and might not be required whilst allowing for the unexpected to arise during the examination.

Documentation

Material taken from the body and seized under Section 19 of PACE 1984 or the common law is subject to the same level of continuity as any other Police criminal property or exhibit. For this reason, all exhibits taken during the post-mortem will be recorded by the attending exhibits officer (DEO), whether retained by the Forensic Pathologist, the investigation team or left at the mortuary (when no longer required for a Policing purpose). All exhibits required for criminal purposes will be recorded on Niche\HOLMES and transferred into Police property where they will be retained, ensuring that tissue is correctly documented and proper continuity is maintained.

A single list should be produced by the DEO of all material retained at the post-mortem examination and a copy provided to the SIO, Forensic Pathologist and the Coroner. The list should specify under what authority the material was taken (i.e. the Coroner's or the Police's authority).

The SIO, OIC and Exhibits Officer have a joint responsibility to ensure all samples are accounted for and therefore the single list must be updated when material is returned to the body or to the next of kin or personal representative(s) of the deceased; sent for further examination; or returned to the Coroner for disposal. It should act as a comprehensive history detailing the continuity of material, which is easily auditable and from which the provenance of the material can be clearly ascertained. This principle also applies to material taken at any subsequent post-mortem examination(s) - for instance a second or 'defence' post-mortem.

Checks should be made with the relevant Forensic Pathologist as to where they will be storing any samples retained by them.

A signed Tissue Retention Form must be obtained from the next of kin/the deceased's personal representative(s) as soon as possible. This form will be completed by the Coroner's Officer. A copy must be retained within the Home Office Large Major Enquiries System (HOLMES V18)/Niche OEL and a copy retained by the Coroner.

In cases of child death this form is sometimes completed by the Rapid Response Practitioner. In these cases, a copy must be obtained and recorded within HOLMES V18/Niche OEL and a copy retained by the Coroner.

Retention and continuity of human tissue material (within the UK)

Like any other property seized as part of a criminal investigation, material retained must be kept in secure storage and under suitable conditions. The location of material must be properly recorded, indexed and easily accessible.

On occasions, human tissue material including organs may be submitted for specialist examination and will be out of direct Police control; the SIO, OIC and Exhibits Officer have a joint responsibility to ensure that the specialists who handle the exhibit maintain its integrity and continuity by fully documenting the receipt, storage, and disposal of the tissue.

The SIO must also ensure that any specialist is kept apprised of the conclusion of the criminal investigation and, if appropriate, sanction the disposal of any organs, organ parts, tissue blocks and slides that may have been obtained during the examination in accordance with the wishes of the next of kin/the deceased's personal representative(s). Therefore, a copy of the Tissue Retention Form must be made available to the specialist to ensure their compliance with the HTA 2004. This form should accompany the organ/tissue when it is transported to the specialist.

The single list will provide a system for tracking the location and storage of human tissue, and the holding institution (for instance the mortuary or hospital laboratory) must be informed of any instructions relating to the exhibit's retention or disposal - taking into consideration the wishes of the next of kin/the deceased's personal representative(s).

Consultation with the Forensic Pathologist

The SIO should consult with the Forensic Pathologist regarding any aspect of the investigation that may have a bearing on the continued retention or disposal of human tissue. This will ensure that tissue that is no longer required can be respectfully disposed of in a timely manner in accordance with the wishes of the next of kin/the deceased's personal representative(s) and conversely that Police only retain tissue that is required for investigation purposes.

Consulting with the Forensic Pathologist in this way will provide the SIO with confidence that human tissue is not being retained unnecessarily (see Disposal of Human Tissue Material below). Nevertheless, the final decision as to disposal rests with the SIO and Coroner.

Examination of samples by a second (defence) Pathologist

On occasions, samples are sent by the Forensic Pathologist conducting the initial post-mortem, to a second Forensic Pathologist acting for the Defence. In such cases, the first Forensic Pathologist should seek permission from the SIO to do this. The OIC/Exhibits Officer are to ensure that such samples are returned to Police to facilitate disposal in an appropriate manner. The Forensic Science Regulator has issued guidance in this regard entitled 'Provision of Human Tissue to the Defence'.

Sending samples for examination outside of the jurisdiction

There may be occasions when the Home Office's registered Forensic Pathologist or the Pathologist acting for the Defence wishes to send human tissue for examination to an expert outside of the jurisdiction (for instance where no suitable forensic expert can be found in the UK).

It should be noted that the export of evidence can give rise to problems: -

- The material will be outside the control of the Police or Coroner on whose authority it is held.
- The material is no longer under the control of the courts in this jurisdiction.
- It will be difficult to supervise the actions of those in possession of the material.
- The risk of the material being lost is increased.
- The maintenance of continuity will be more difficult; and
- The material will be subject to the laws of the country to which it is exported, and this creates a risk of satellite litigation.

It is therefore recommended that human tissue **is not** exported outside of the three UK jurisdictions unless absolutely necessary (when for instance a suitable expert cannot be sourced within the UK).

Regular reviews of human tissue seized by police

It is the responsibility of the SIO to ensure that reviews of human tissue exhibits are undertaken regularly throughout the investigation. This is particularly important prior to the release of the body and at the post-trial debrief. It is recommended that an early (or perennial) action is entered onto HOLMES V18/Niche OEL for this purpose at the start of the investigation. Niche is currently set to send chasers every 90 days for exhibits stored on its system.

The Senior Coroner's Officer and their Supervisor will conduct and record six monthly reviews of all deaths which have involved North Yorkshire Police and a forensic post-mortem. This is to ensure that completed Tissue Retention forms are on file, copied to Forensic Pathologist, sent to specialists etc, to allow accurate location of human tissue, appropriate disposal etc.

Disposal of human tissue material

A debrief should take 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, CPS and the Forensic Pathologist and be documented in a recoverable form. This does not need to be a physical meeting, but clear decisions need to be made and recorded in consultation (by whatever means) concerning the retention and disposal of human tissue.

In cases where either: -

- The outcome of the death investigation is not one of homicide; or
- The outcome of the death investigation is homicide, but the human tissue taken at post-mortem is not required for the ongoing investigation.

The human tissue should be returned to the body, if possible, prior to release to the next of kin/personal representative(s).

In cases where the body has already been returned to the next of kin or personal representative(s), tissue should be disposed of in accordance with the next of kin or personal representative(s) wishes (which will be recorded on a Tissue Retention Form).

In any event, material should not be disposed of without prior consultation with the Coroner who may wish to retain it for the purpose of their duties at an inquest.

Where appropriate, the CPS should also be consulted before final disposal of any tissue samples. Advice from the Forensic Pathologist will assist the SIO and CPS in this decision-making process.

It is the responsibility of the OIC/Exhibits Officer to update the single list regarding items that have been disposed of/returned, under whose instructions, when etc. It is also their responsibility to update the relevant Police property system (ERP have monthly collections at different Police stations for items to be appropriately disposed of, alternatively liaison with a mortuary may be more appropriate).

Where the samples are required for the purposes of a Criminal Justice case, e.g. where the Police have charged someone with murder, Section 22 PACE will obviously apply until the verdict is given at the trial.

Section 23 CPIA directs that where the exhibit is relevant in a Police investigation, the exhibit should be retained until the person convicted is released from custody or is discharged from hospital.

If the Court imposes a custodial sentence or hospital order and the convicted person is released from custody or discharged from hospital earlier than six months from the date of conviction, all material which may be relevant must be retained until at least six months from the date of conviction.

If an appeal against conviction is in progress when the release or discharge occurs, or at the end of the period of six months specified, all material which may be relevant must be retained until the appeal is determined. Similarly, if the Criminal Cases Review Commission is considering an application at that point in time, all material which may be relevant must be retained at least until the Commission decides not to refer the case to the Court.

Therefore, an exhibit can be seized under PACE and the Coroners Act, retained under Section 22 PACE and subsequently transferred to the retention power of Section 23 CPIA. The Police should always be aware of the power that the exhibits are retained under and policy decisions should be fully documented to reflect this.

For undetected Group 1 Offences records should be retained for a minimum of 100 years from the date reported to the Police. However, reviews should be undertaken at least every 10 years to ensure samples retained are still relevant/necessary.

Actions when initially suspicious cases revert to non-suspicious

In many cases the conduct and result of the forensic post-mortem examination will help to inform the SIO at an early stage that the death is non-suspicious.

It is possible that a decision may be made by the SIO to declare the death as non-suspicious immediately after the conclusion of the post-mortem examination. In such cases, human tissue exhibits may already have been seized using Police powers under PACE 1984 or the common law but are no longer required for Police purposes.

Where this is the case, it is essential that the Coroner is informed that the status of the investigation has changed, and that the Coroner be consulted about disposal of the tissue - whether it is still required for Coronial purposes, or whether it should be returned to the body for burial or cremation. It should be noted that if the material is disposed of by the Police in accordance with an appropriate protocol, the HTA 2004 will not apply.

If the material is however retained on the Coroner's authority, the consent requirements of the HTA 2004 do not apply although the licensing requirements will. This means that the Coroner and those holding the material on his behalf will need to take steps to comply with the licensing requirements of the HTA 2004. In addition, the Coroner may only retain samples to help identify the cause of death or the identification of the accused for so long as they need to be preserved for the purpose of fulfilling these functions.

A DEO will record all samples taken during the forensic post-mortem on HOLMES V18\Niche OEL detailing their location, i.e. left at the mortuary. These samples however will not be retained by the Police or booked into Police property.

The Coroner's Officer should be updated as soon as practicable that the death is no longer a criminal investigation. It is then their responsibility to check HOLMES V18\Niche and contact the relevant mortuary to identify what samples have been taken and establish whether samples are required for Coronial purposes.

The Coroner

The statutory duty to inform the relevant persons about what material has been preserved lies with the Coroner. The Coroner is also responsible for notifying the Chief Officer of Police or prosecuting authority of any period for which the Coroner requires material to be preserved or retained. This is in order that the Police do not dispose of material which is no longer required for a criminal justice purpose but may still be required for the purpose of the Coroner.

Even if there is no period notified by the Coroner or the period has elapsed there should be a check with the Coroner over disposal.

Family Liaison

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

The CO do not work for the police but are appointed on behalf of the Coroner, they will make contact with the family independently over the investigation to introduce themselves and complete the below;

- CO will explain the Post Mortem (PM) process and coroner's decision – If the PM is taking place out of hours then the family will be informed of the time and place. What will happen thereafter should be explained with a reassurance that the CO will contact them to talk about next steps in respect of release of their loved one.
- CO will update the family as to the cause of death following a PM, please consider that the coroners office is not open on bank holidays so a family will not be updated.
- CO will complete tissue requirements
- CO will discuss release of the deceased.
- CO will complete the paperwork required with the family for interims, tissue and release

FLOs will

- Update the CO as to the family make up and who is acting as a point of contact.
- Advise the family that the CO will contact the agreed point of contact in your initial meeting

In cases where the criminal investigation ends the FLO's will arrange to exit the family and the CO will be in touch to advise as to the next steps. The decision as to whether to hold an inquest is one for the Coroner and this will be communicated to the family by the CO.

Early agreement should be reached between the Coroner's Officer and the FLO as to who will communicate with the next of kin or personal representative(s) so as not to duplicate contact.

The Coroner has lawful control of the body and the decision for its release ultimately rests with them. Therefore, the SIO should ensure that the Coroner is updated about the progress of enquiries when these may potentially affect the timely release of the deceased for burial or cremation.

Once the Police have no further requirement for the body, the SIO is to produce a release statement covering this which is forwarded to the Coroner's Officer and documented on HOLMES V18\Niche OEL.

Next of kin and personal representative(s) wishes regarding return of body/disposal of human tissue

Families will be asked if they wish to wait to receive the body complete (this could take a long time), or if they would prefer the body (even if not complete) to be returned as soon as possible. However, they should be made aware that some material from the body may be preserved for further examination or evidential reasons and possibly retained for many months or even years. For example, if examination of the brain is necessary, it is often more than six weeks before a report is available. In paediatric cases, delays may be even longer.

The wishes of the next of kin or personal representative(s) regarding eventual disposal of human tissue taken at post-mortem should be ascertained in writing on a Tissue Retention Form, which gives the following options: -

1. That the items are disposed of in a lawful way by the Hospital Authorities/Police, which may include incineration without them being used for research and/or education.
2. That the items are reunited with the body prior to the funeral even though there may be a delay to the funeral due to the samples being tested, and that the next of kin or personal representative(s) will make arrangements for the storage of the body until that time.
3. That the items are returned to the family for later burial or cremation via the chosen funeral director.
4. That the items may be retained by the Hospital for research and/or education for as long as it shall consider appropriate and then disposed of in a lawful way, which may include incineration.

It is essential to explain to the next of kin or personal representative(s) the fact that small samples such as blocks and slides may be retained for a significant period of time (usually up to 30 years) depending on the individual circumstances of each case, and a record of the fact that this has been explained to them should be made and retained. This may be particularly so in cases where the perpetrator has been convicted and the material is retained until the convicted person is released from prison, or in un-detected cases which will be subject to review.

Retention of human tissue should align with any requirements of Management of Police Information (MOPI).

Disposal of human tissue material held on authority of the police

Pregnancy remains

Regarding the disposal of pregnancy remains which may have been retained in connection with a criminal inquiry, although the seizure will likely have been made under the relevant provisions of PACE 1984 or the common law, disposal in these extremely sensitive cases should be conducted, where possible and dependent on the circumstances of the case, in the spirit of the HTA publication 'Guidance on the disposal of pregnancy remains following pregnancy loss or termination'.

Historically Held Human Tissue

Human tissue taken at post-mortem is sometimes discovered at mortuaries and hospital laboratories by the HTA during their routine inspection regime of post-mortem establishments.

Such discoveries will be reported to the Home Office Forensic Pathology Unit ('HOFPU'), and they will liaise with the relevant Police Force to determine whether it should be disposed of.

The Police must confirm to the holding establishment (e.g. mortuary or pathology laboratory etc) whether the human tissue is still required for a criminal justice purpose, or whether it should be respectfully disposed of and inform the HOFPU of the outcome.

Material no longer required for a criminal justice purpose is divided into three categories as per the Forensic Science Regulator's guidance. How material is disposed of depends on which category the material falls into and each should be considered on a case-by-case basis. The flowcharts attached, in conjunction with the National Decision Model, will assist in the decision-making process.

Summary

All human tissue must be accounted for and capable of audit at all stages of the investigation, from initial seizure through to final lawful disposal.

The SIO must therefore be confident of: -

- A lawful power to seize.
- A continuing lawful purpose to retain and examine.
- A clear policy for disposal.
- The fact that the Coroner has been informed in writing of all material preserved; and updated where the status of the investigation reverts to non-criminal.