

## Code of practice and performance standards for forensic pathology in England, Wales and Northern Ireland

Home Office, The Forensic Science Regulator, Department of Justice and  
The Royal College of Pathologists

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## Contents

<b>1</b>	<b>Introduction</b>	<b>4</b>
<b>2</b>	<b>Professional standards in forensic pathology</b>	<b>6</b>
<b>3</b>	<b>Initial contact with the pathologist</b>	<b>8</b>
3.1	Standard	8
3.2	Code of practice	8
<b>4</b>	<b>The briefing</b>	<b>9</b>
4.1	Standard	9
4.2	Code of practice	10
<b>5</b>	<b>Scene of discovery of the body</b>	<b>10</b>
5.1	Standard	10
5.2	Code of practice	11
5.2.1	Application	11
5.2.2	Scene management	11
5.2.3	Action at the scene	11
5.2.4	Importance of notes	11
5.2.5	Photography	11
5.2.6	Position of the body	12
5.2.7	Assessment of the time of death	12
5.2.8	Other aspects of scene examination	12
5.2.9	Involvement of other specialists	12
5.2.10	Prevention of contamination at the scene	12
5.2.11	Taking of specimens at the scene	13
5.2.12	Removal of the body	14
<b>6</b>	<b>The autopsy</b>	<b>14</b>
6.1	Standard	14
6.2	Code of practice	15
6.2.1	Approach to the autopsy	15
6.2.2	General considerations	15
6.2.3	Involvement of other specialists	16
6.2.4	Photography	16
6.2.5	Radiology	17
6.2.6	Autopsy notes	17
6.2.7	Removal of clothing	17
6.2.8	Collection of trace evidence from the body	17
6.2.9	Autopsy procedures	18

<b>7</b>	<b>The pathologist's autopsy report .....</b>	<b>21</b>
7.1	Standard .....	21
7.2	Code of practice .....	22
7.2.1	General comments .....	22
7.2.2	Rapid interim account .....	23
7.2.3	Report preamble .....	23
7.2.4	History .....	23
7.2.5	The scene of discovery of the body .....	24
7.2.6	External appearance of the body .....	24
7.2.7	Injuries .....	24
7.2.8	Internal examination .....	24
7.2.9	Supplementary examinations .....	25
7.2.10	Commentary and conclusions .....	25
7.2.11	Cause of death .....	26
7.2.12	Retention of samples .....	26
7.2.13	Final check .....	26
7.2.14	Time of submission of the report .....	26
7.2.15	Disclosure of information to the defence .....	26
7.2.16	Change of opinion .....	27
7.2.17	Views of others .....	27
<b>8</b>	<b>Conferences and other subsequent action .....</b>	<b>28</b>
8.1	Standard .....	28
<b>9</b>	<b>The pathologist and the defence .....</b>	<b>28</b>
9.1	Standard .....	28
9.2	Code of practice .....	29
<b>10</b>	<b>Attendance at court .....</b>	<b>29</b>
10.1	Standard .....	29
10.2	Code of practice .....	30
<b>11</b>	<b>References .....</b>	<b>30</b>
<b>12</b>	<b>Membership of author groups .....</b>	<b>31</b>

## 1 Introduction

The first edition of this code was developed and accepted jointly by the Home Office Policy Advisory Board for Forensic Pathology (“the Policy Advisory Board”) and The Royal College of Pathologists (“the College”) to allow forensic pathologists to demonstrate high standards of professional performance using valid and acceptable criteria.

The second edition of this code was developed and accepted by the Forensic Science Regulator (the “Regulator”) (on the advice of the Forensic Pathology Specialist Group [FPSG]) and the College (on the advice of the Specialty Advisory Committee on Histopathology and the Forensic Pathology Sub-Committee).

The document is directed primarily to practitioners working within England, Wales and Northern Ireland. It is hoped, however, that it will also be of value to pathologists who work outwith these borders even though they may operate in a different professional climate.

The document is built upon the guidelines issued in 1996 by the Policy Advisory Board and incorporates performance standards for the profession drawn up in cooperation with the Professional Standards Unit of the College. It will be kept under regular review and updated as and when appropriate. The most recent version of this Code will be posted on the websites of The Royal College of Pathologists and the Regulator.

The document is divided into sections, each dealing with a specific aspect of the activity of those undertaking forensic pathology. Each section commences with a statement of the standard of practice expected of a pathologist. New recruits to the profession seeking appointment to the Home Office Register will be expected to display competences derived from these standards. The document then goes on to expand, where necessary, upon the way in which these standards should be maintained during delivery of the service.

The code of practice is consistent with Recommendation R(99)3 of the Council of Europe on the Harmonisation of Medico Legal Autopsy Rules, adopted by the Committee of Ministers in February 1999,<sup>1</sup> and takes account of recent legislation, case law and changes to criminal procedure.

### **Territorial extent**

**England and Wales:** These standards apply to England and Wales.

**Northern Ireland:** In Northern Ireland, all forensic pathology services are delivered by the State Pathologist’s Department, which is sponsored by the Department of Justice. Forensic pathologists work under the authority of the Coroners Service for Northern Ireland and in line with local Coroners legislation.

The Department of Justice has confirmed that the national Code of Practice will apply to services provided by practitioners in the State Pathologist’s Department, to ensure that forensic pathologists in Northern Ireland work to the same high standards of professional practice as their colleagues in England and Wales. In reading across the national standards, it should be noted that any references to the Crown Prosecution Service should be taken as covering the Public Prosecution Service for Northern Ireland.

**Scotland:** These standards do not apply in Scotland. Separate, but closely related, standards apply in that jurisdiction.

### **Scope**

This latest version of the Code of Practice is directed not just to those doctors whose profession is ‘forensic pathology’ but also to other pathologists who may only occasionally undertake forensic pathological investigations. All such practitioners, whatever the extent of their engagement in

forensic work, share the same duty to the criminal justice system and the courts and should accordingly understand and abide by the standards set out in this Code of Practice.

In this document “forensic pathology” shall be interpreted as covering any case where (a) there is, or is likely to be, an investigation by any authority leading to serious criminal charges and (b) information derived from the post-mortem examination may be used in the investigation or at trial (whether by the prosecution or defence). The Code will apply to work performed within its territorial extent regardless of where the death occurred or where the investigation/prosecution may occur. However, if the death occurred outside the territorial extent, the appropriate authority may give specific instructions that the Code should not apply.

The term serious criminal charge refers to the following offences (or their equivalents in the relevant jurisdiction):

- murder
- manslaughter
- infanticide
- serious assault (e.g. grievous bodily harm – with, or without, intention) and
- serious offences related to a road traffic incident involving death (e.g. causing death by dangerous driving, causing death by careless or inconsiderate driving or causing death by driving while uninsured or unlicensed).

The Code shall only apply, directly, to cases where the likelihood of serious criminal charges being brought was clear at the point at which the post-mortem examination was started or, when the pathologist performing the examination stops the examination to allow a different pathologist to perform the examination, re-started. It follows that the Code shall not apply retrospectively to “routine” cases if they become the subject of a criminal investigation.

While the Code will not apply directly (that is retrospectively) in cases where a criminal investigation is initiated after a “routine” post-mortem examination it is stressed that many of the provisions of the Code are statements of obligations placed on participants in the criminal justice system. It is therefore good practice to follow the provisions of the Code from the point at which it is clear there is a criminal investigation.

The Code may also apply (subject to relevant legal restriction) to forensic pathology work undertaken outside the territorial extent where those instructing the pathologist specify that it shall.

#### **Note on gender**

Throughout this document, ‘he’ and ‘him’ are used to refer to individuals. These words are used for simplicity and consistency, and are not intended to show any gender bias.

#### **Importance of the codes of practice and conduct**

Adherence to the codes of practice and conduct will be an essential requirement of being registered by the Home Office as competent to practise forensic pathology in England and Wales. They set out the standards to be maintained by all those who practise forensic pathology whether they are registered or not.

If there are occasions on which a pathologist decides to depart from these codes, they must be able to justify their reasons to colleagues, to the criminal justice system and, if necessary, to the Pathology Delivery Board (the “Delivery Board”) and the College.

#### **Investigation of suspicious deaths**

The investigation of suspicious deaths involves two simultaneous, but separate, investigations. The first, by the coroner, is to determine the identity of the deceased and the cause (and circumstances) of the death. The second, by the police, is to determine whether a criminal offence has occurred and, where it has, to bring the offender to justice.

The pathologist has a role in both of the investigations. In relation to the coroner's investigation he acts on the instruction of the coroner and has specific responsibilities under coroners' law to retain material. In relation to the police investigation his role is to assist and advise the police.

### **The duties and responsibilities of the pathologist**

Among the duties and responsibilities of the pathologist, the following elements are considered particularly important:

- personal expertise: keeping up to date with the latest methods and thinking by, for instance, actively pursuing relevant continuing professional development (CPD) programmes
- standards: accepting the use of agreed documented procedures and participating in appropriate schemes of peer review and audit
- integrity of evidence: ensuring that the integrity of evidence is not compromised
- complying with the obligations placed on expert witnesses and, in particular, their overriding duty to the Court (see for example Part 33(2) Criminal Procedure Rules)
- ensuring the fair presentation of findings: presenting findings and evidence in a balanced and impartial manner, and confining opinions to those based on personal skills and experience, referring to the work of other experts in the field where appropriate
- understanding the criminal justice system: recognising the importance of the disclosure of information to relevant parties and
- service provision: addressing and, where possible, meeting customers' needs, including timeliness, providing relevant information and communicating effectively with police officers and others in the investigative process.

## **2 Professional standards in forensic pathology**

### **Introduction**

The General Medical Council (GMC) is responsible for maintaining the Medical Register in the United Kingdom. First and foremost, the pathologist is a doctor, bound by the principles that govern this Register. While the responsibilities of the pathologist may differ somewhat from those of the majority of medical practitioners, both the Regulator and the College advocate the principles of good practice summarised in the GMC's publication, *Good Medical Practice*.<sup>2</sup> This document forms the base against which should be judged every action taken by a doctor. The GMC has also published a document on the responsibilities of expert witnesses.<sup>8</sup>

The responsibilities of the pathologist in respect of all aspects of his work, including audit, clinical governance, quality assurance, CPD, revalidation and research are the same as those of any medically qualified clinical pathologist. However, he also has responsibilities to the criminal justice system, including the need to offer impartial evidence, the integrity of which is not compromised, and the need to present such evidence in a manner that is acceptable to others involved in the criminal justice system. The pathologist's primary duty is to the court and he must not act in any way that fails to acknowledge that duty.

The Regulator and the College share responsibility for setting the standards that underpin high quality forensic pathology services. Pathologists must ensure that the service they provide is of high quality and conducted in accordance with a formal service level agreement (SLA) or Memorandum of Understanding (MoU) that demonstrates a commitment to quality, transparency and accountability. It is recognised that not all deaths occur in circumstances where all the steps in this process are required, but the absence of a step does not constitute an argument for ignoring the principles inherent within the code.

The standards set out in this code must be applied by the forensic pathologist, regardless of the party instructing that individual. All pathologists have a duty to consider and investigate explanations for a

death consistent with the innocence of an accused person. Where such an explanation cannot be excluded, it must be brought to the attention of the pathologist's instructing party.

### **The code of practice**

This code sets out what is expected of the pathologist in the performance of each step in the process of investigation of a suspicious death, from the initial contact from the police regarding that death to the presentation in a court of evidence relating to the death. It provides a framework within which clinical audit and performance review can be carried out to assure the quality of performance of individual pathologists, as well as to facilitate the collection of evidence for the revalidation process.

### **Mortuary facilities**

It is recognised that the pathologist may have to perform autopsies within mortuaries where he has no formal contract of employment with the providers. Pathologists should be satisfied that the mortuaries in which they work have facilities equivalent to the standards set out in Health Building Note (20) (NHS Estates) and the Health Services Advisory Committee's documents on safe working and the prevention of infection in the mortuary and post-mortem room. If a pathologist is not satisfied with any aspect of a mortuary, he should make these concerns known to those instructing him, such as the coroner and police force involved.

The mortuary must be licensed by the Human Tissue Authority for the performance of post-mortem examinations and the pathologist must be covered by that licence. If the pathologist is not confident that these conditions are met he must not perform the examination.

Where a pathologist is aware that a mortuary in which it is proposed to make a post-mortem examination falls substantially below any standards laid down by the Regulator, the pathologist should refuse to make the examination in that mortuary. The pathologist should notify the coroner and the Senior Investigating Officer (SIO) of the decision and the reasons for it.

### **Peer review**

It is important that pathologists regularly consult and discuss their cases with colleagues, and all registered pathologists must have arrangements in place so that this can be done. They must have arrangements in place, using face-to-face contact and electronic means, in which particular types of case (for instance, homicides, infant deaths and deaths in custody) can be peer-reviewed prior to issue of the report to the coroner and police. The use of practice meetings to review complex cases is a worthwhile approach. The value of review by peers cannot be overstressed and will be referred to throughout this document. The pathologist must not work in isolation from colleagues, either within the discipline of forensic pathology or from other clinical disciplines.

### **Assistance from other specialists**

Practitioners must have in place adequate arrangements whereby they can consult with experts in other medical specialties who may be asked to assist or advise in appropriate cases. They will be expected to have full and easy access to departments of all other branches of pathology, including secure specimen storage, to a department of radiology and to a forensic science laboratory. They should have adequate provision of modern information technology (IT), including Internet access.

### **Keeping up to date**

Practitioners should have ready access to a comprehensive medical library, including appropriate journals. They have a duty to keep up to date and must be able to advise counsel and others on the current literature.

## Departure from the standards

Where the pathologist becomes aware of an unjustifiable departure from these standards, whether by himself or by another practitioner, that departure must be brought to the attention of the pathologist's instructing party. Where the pathologist becomes aware of repeated unjustified departures from these performance standards, he must bring such concerns to the attention of the Delivery Board.

## Record-keeping

The maintenance of adequate records is vital and full notes must be kept of briefings and conferences, as well as of all work carried out, tests performed and results obtained. Pathologists' records constitute 'relevant material' under the Criminal Procedures and Investigation Act 1996 and must be retained for the minimum periods detailed in the code of practice issued under that Act. Pathologists must comply with the guidance issued by the Crown Prosecution Service (CPS) on expert witnesses' obligations on disclosure (Annex K of the CPS Disclosure Manual).

Records must be properly indexed and archived in secure storage. There may be occasions (such as at the scene of the discovery of the body or during the autopsy) in which the pathologist may dictate notes to a tape recorder. In such circumstances, the original media, as well as any transcript made from them, must be retained.

When recording information gained or generated at any stage of the investigation, it is important to remember that all such material is potentially disclosable to the other parties involved in a legal action.

## 3 Initial contact with the pathologist

### 3.1 Standard

The pathologist must be readily accessible to the police in accordance with whatever conditions are set out in an appropriate SLA or MoU.

At the initial contact with the senior investigating officer (SIO) or his deputy, the pathologist will determine:

- a) that the coroner has been notified of the death and has authorised the attendance of the pathologist
- b) the nature of the case and, if known, issues raised by it
- c) whether the case raises any issues of conflict of interest
- d) the requirement for attendance of the pathologist at the scene of discovery of the body and
- e) how the pathologist will reach the location of the briefing, should there be reasons why it may not be possible for the pathologist to make his own way there.

Discussion of these issues must be fully documented by the pathologist, with relevant dates and times.

### 3.2 Code of practice

It is the responsibility of the pathologist to ensure that, when on call, he can be contacted at all times. Adequate arrangements should be in place for registered pathologists to be available to provide cover during off-duty and leave periods. Maintenance of these arrangements is the responsibility of the forensic pathology practice. Those involved in a rota system should give adequate advance notice of any changes in such arrangements to the police forces concerned.



It is also the responsibility of the forensic pathology practice to ensure that appropriate police forces and coroners are fully acquainted with all relevant telephone, pager and fax numbers. Even when not on duty, it is helpful if possible contact details are known in case there is some emergency, such as a mass disaster, in which the attendance of as many pathologists as possible may be required.

Call-out arrangements vary around the country. In some areas, the SIO or deputy may call the pathologist. In others, senior scenes-of-crime officers (SOCOs) or the coroner's officer may fulfil that role. The pathologist can reasonably expect to speak to the SIO if he wishes.

The pathologist should attend the scene where such attendance is likely to be of benefit to the investigation. This should be determined in consultation between the pathologist, the police and, where relevant, the coroner.

There should be no unreasonable delay in responding to a call, particularly where examination of the body at the scene is required. The police must be made aware of the time required to travel to a particular incident; this will vary from situation to situation depending on the distances involved. What constitutes a reasonable response time should already have been agreed with the force, and will probably be encompassed in the contractual arrangements. If there is to be delay beyond this time, arrangements should be in place and adequate resources available for the provision of a suitable deputy.

On occasion, the pathologist can reasonably expect the police to make arrangements for travel, for example to avoid the pathologist having to drive a long distance. Provision of rapid transfer by the police may also be appropriate in some cases.

The pathologist should be alert to the issue of conflict of interest. Should the pathologist have any concern that his involvement could raise such an issue he should inform the coroner and police and decline instruction in the case. In considering whether an issue arises the pathologist should ask whether the fair minded and informed observer, having considered the facts, would conclude there was a real possibility of conflict.

## **4 The briefing**

### **4.1 Standard**

The briefing may occur before the attendance at the scene or before the post-mortem examination depending on the circumstances of the case. At the briefing, the pathologist will, in liaison with the SIO, the crime scene manager (CSM) and other experts present, e.g. a forensic specialist advisor, and in the light of available information, determine:

- a) where necessary, health and safety issues in relation to the scene of discovery of the body and the personnel involved in the examination of that scene
- b) what evidential issues are raised by the circumstances of death and how these issues are best approached
- c) what risks of contamination are posed by the circumstances of the case and what measures are required to prevent such contamination
- d) the plan of approach to the examination of the scene and body and

- e) the best location for the autopsy and, if possible, an approximate time of arrival at that location.

The pathologist must make a detailed, dated and timed record of the briefing.

## 4.2 Code of practice

The pathologist must ensure that he obtains such details of the circumstances of the death as are available. He should be briefed by either the SIO or another officer delegated for this task by the SIO. This briefing should be carried out at the first available opportunity, and should certainly be done before the pathologist carries out any detailed examination of the body or the scene of the incident. The briefing should include any version of the circumstances emanating from witnesses, together with any possible explanation advanced by the suspect.

Adequate and appropriate briefing is essential if the pathologist is to obtain the maximum information from his examination. The act of carrying out the autopsy will alter the condition of the various parts of the body and, if the pathologist does not learn of possible explanations for his findings until after his examination is completed, there is a risk that the best evidence to confirm or contradict the explanation may not be available.

The pathologist will not assume that any one of the explanations that have been advanced for the death is necessarily correct. He will, however, in due course consider any explanations in relation to his own findings in order to come to properly reasoned conclusions.

It is important that the pathologist records any briefing given to him in sufficient detail, including the date and time, to enable the practitioner himself (or some other individual) to recall and understand any matter that he may have had in mind when conducting the examination. The absolute importance of proper notes is stressed throughout this code.

## 5 Scene of discovery of the body

### 5.1 Standard

The pathologist will, when he attends the scene, (after discussion with the SIO and CSM):

- a) agree the approach to the scene
- b) enter the scene only by the agreed route of access, using the protective clothing agreed as appropriate to the circumstances of the case
- c) determine whether any special techniques or procedures may be needed during the examination of the scene and body
- d) determine what specimen recovery will take place from the body at the scene and, in due course, take (or supervise the taking of) such samples
- e) ensure the protection of any trace evidence that is not to be collected prior to removal of the body from the scene
- f) determine the route of removal of the body from the scene and, if necessary, supervise the removal of the body by the funeral director or other appropriate person
- g) be prepared to give advice upon any health and safety issue (where this lies within the pathologist's area of expertise)
- h) record all data that assist in attempts to determine the time of the death and

- i) ensure that if it is necessary to manipulate the body during the examination, such manipulation is adequately recorded.

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

## 5.2 Code of practice

### 5.2.1 Application

This section applies where the pathologist attends the scene.

### 5.2.2 Scene management

With advances in resuscitation, bodies are often immediately and quite properly removed from the scene of discovery and transferred to a local hospital. When a body is still *in situ*, however, careful consideration must be given to the need for the pathologist to attend the scene. Even when a body has been removed, examination of the scene may provide useful evidence, even though the autopsy may already have been carried out.

The Association of Chief Police Officers' *Murder Investigation Manual* documentation on homicide investigation instructs that the pathologist should be informed without delay in cases of sudden or suspicious death.<sup>5</sup> On receiving notification the pathologist will assist the SIO and CSM in developing a plan for management of the scene. This will often but not invariably involve the attendance at the scene by the pathologist. It is recognised that with advances in forensic scientific examination at scenes, there may be competing aspects of scene examination. Nevertheless, the pathologist still has a potential role in the management of most scenes, even where they do not actually attend. When a scene has not been attended, photographs, video recordings and other imaging techniques may be useful in the subsequent briefing of the forensic pathologist.

### 5.2.3 Action at the scene

Prior to or on arrival at the scene, the pathologist should be briefed by the SIO or a senior deputy, ideally with other appropriate experts present. The pathologist should record the facts given to him at this briefing. Reference should be made to the notes on 'The briefing' given in section 4.

The scene will be under the control of the CSM and the pathologist's approach to the body and the examination of other aspects of the scene should be undertaken only after consultation with this officer and other scenes-of-crime experts who may be present. Such discussions must include routes of access to the scene and the prevention of contamination.

Where there has been no briefing before the scene visit, all of the issues described in section 4, 'The briefing', will still need to be considered before entering the scene. Attendance at the scene itself may require reconsideration of decisions made at the briefing.

### 5.2.4 Importance of notes

The pathologist should always record his actions and observations at the scene using comprehensive written or taped notes, including the use of sketch plans where appropriate. These records will be needed during preparation of the report and when giving evidence in court. Again, reference should be made to section 4, 'The briefing'.

### 5.2.5 Photography

The pathologist should advise that adequate photographs of the body are taken. If this has already happened, consideration should be given to the need for any additional photographs.

### **5.2.6 Position of the body**

The position of the body and that of each of the limbs and of the head should be recorded, together with the relationship of the body to adjacent objects such as furniture and other articles. The state of the clothing should also be noted.

There should be no movement of the body before photographs have been taken, except as necessary for confirmation of life extinct and/or for resuscitation purposes.

### **5.2.7 Assessment of the time of death**

Except where the body has been exposed to fire or is decomposed or skeletal, recording of the ambient temperature and, if possible (given the position of the body), the deep temperature of the body will normally be made. However, it is recognised that the latter is invasive and may interfere with the proper collection of other, potentially more important evidence at the scene. The pathologist must be able to justify the lack of taking of a body temperature if the scene was attended.

The genitalia and anus should be examined and swabs taken before a thermometer or thermocouple is introduced – if that is the method employed. If, for some reason, it is not practical to measure the body temperature at the scene, it may be recorded as soon as practicable upon arrival of the body at the mortuary. The degree, location and fixation of rigor mortis and hypostasis should be noted.

Police officers should not allow police surgeons or forensic medical examiners to make such measurements without prior discussion with the pathologist. However, providing the former are appropriately trained and experienced, their involvement may expedite the taking of a body temperature in cases where it has been deemed to be of potential importance, and where its taking will not interfere with other potentially relevant evidence.

### **5.2.8 Other aspects of scene examination**

Detailed examination of the scene of discovery of the body is usually undertaken by forensic scientists and SOCOs. However, the pathologist may be required to inspect other aspects of the location and note any findings. This requirement is clearly a matter for discussion with the CSM.

It may be appropriate for the pathologist and a forensic scientist jointly to examine the scene, including features such as the distribution and appearance of any bloodstains. Although the forensic scientist's report will contain detailed comment on such matters, it is the pathologist who should be directly responsible for giving an opinion upon the nature and possible cause of wounds that may be the source of the blood. The distribution of blood from any injuries may need to be taken into account by the pathologist in reconstructing the way in which injuries were likely to have been inflicted.

In addition to advising the SIO and CSM in relation to forensic pathology the pathologist should also offer advice on the handling and, where appropriate, concealment from public view of the body of the deceased.

### **5.2.9 Involvement of other specialists**

Occasionally, it may be appropriate to seek advice from other specialists, such as forensic entomologists or anthropologists. Where the pathologist considers such involvement would be of assistance he should make the SIO and CSM aware of that need. Such advice should be recorded.

### **5.2.10 Prevention of contamination at the scene**

Only the minimum number of personnel required for efficient and safe examination of the scene should enter that scene. Where it is likely that minute traces of evidence may be important, e.g. in the use of low template DNA, consideration should be given as to whether the pathologist has a

role at all in terms of actually entering the scene. Appropriate protective clothing, as determined by the CSM, should be worn. Changes of gloves may be necessary during the investigation, particularly if exhibits are taken during the examination.

### 52.11 Taking of specimens at the scene

It is essential that no specimens be taken from the body until there has been consultation between the pathologist and the CSM. SOCOs and forensic scientists, if present, may also need to be consulted. Where the taking of certain samples is not considered necessary, these should be omitted only after obtaining the consent of the above parties.

Where samples are to be taken for the purposes of the coroner the pathologist must be confident, given the early stage in the investigation, that he has the authority of the coroner.

It is often good practice to take tapings from exposed surfaces of the body and possibly from the clothing. This may be done by, or under the supervision of, the pathologist or by appropriately trained and experienced SOCOs. In cases where, for some reason, no tapings have been taken at the scene, consideration should be given to taking them in the mortuary when the body is first unwrapped.

On occasions, it may be advisable to remove some or all of the clothing at the scene.

All specimens should be taken using equipment supplied or approved by the SOCO. If clothing is to be cut, only instruments supplied by them should be used.

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

- a) tapings from exposed body surfaces and uppermost surfaces of clothing (where that clothing is such that it is considered likely that trace evidence will be shed on manipulation). If clothing is not to be cut away, the manipulation of the body required to remove clothing may dislodge or contaminate trace evidence; clothing should not be removed until specimens have been taken from head and hands
- b) combings of head hair, beard and moustache hair and pubic hair
- c) plucked hairs from the above sites, each sample being representative of the range of hairs present at those sites
- d) where objective evidence of chronic drug use is relevant to the case, a pencil thickness of head hair, cut as close to the scalp as possible and the cut ends wrapped in foil
- e) a swab or swabs from the mouth and teeth
- f) tapings from the hands where any foreign material is recognised; tapings must be taken before fingernail scrapings or cuttings
- g) scrapings from underneath the fingernails of each hand, or fingernail cuttings, using appropriate equipment provided or approved by the SOCO or the forensic scientist. Sampling from hair and hands where the death may be related to firearms or explosives must be made using only a 'Gunshot residues and explosives sampling kit' approved by the relevant forensic science laboratory and preferably with advice from a forensic scientist
- h) swabs from any moist areas on the body surface where the possibility exists that such moist stains have arisen from a person other than the body. Where there is a possibility of sex-related crime, swabs will be taken from those areas where semen or saliva may be most likely considered to be present (face, neck, nipples, hands)
- i) a swab or swabs from the perianal skin, taken before a swab or swabs from the anus
- j) a swab or swabs from vulva and low vagina, taking care to avoid contamination of the latter from the initial swabbing of the former. These swabs must be taken after swabbing of the perianal skin and anus (to avoid leakage during the course of the vulval swabbing) and

- k) a swab or swabs of injuries that may have resulted from contact with another individual where the skin from that individual may have been shed, e.g. swabbing of the skin of the neck in postulated manual strangulation.

In each instance, appropriate control swabs must be taken. Multiple swabs from a single area must be numbered in the order of their taking.

### 5.2.12 Removal of the body

When a scene has been assessed, the pathologist will often supervise the packaging and subsequent removal of the body. Consideration should be given to the need for making the packaging secure and tamper evident. If trace evidence has not been collected at the scene, the hands may be placed in bags before the body is removed. If the head is to be similarly placed in a bag, it must be remembered that any open head wound is likely to shed blood into the bag during transit. This may obscure details such as the direction of dried bloodstains and render difficult the collection of trace evidence. It is often advisable to examine the head, and arrange detailed photographs, for such material at the scene.

On arrival at the autopsy room, the body should remain undisturbed, still in its wrapping or body bag, until the pathologist arrives to undertake the examination, unless any different action has previously been agreed with the SIO or designate for some specific purpose.

## 6 The autopsy

### 6.1 Standard

At the mortuary, the pathologist will:

- a) confirm that the mortuary is licensed by the Human Tissue Authority for the performance of post-mortem examinations and that he is covered by that licence
- b) ensure that the body is that for which the pathologist has authorisation from the coroner to do an autopsy
- c) if trace evidence was not taken at the scene, ensure that as far as practicable there is no opportunity for contamination of the body from any fixture, fitting or person at the mortuary
- d) take, or supervise the taking of, any necessary trace evidence not taken at the scene
- e) ensure that any manipulation of clothing once removed from the body takes place over the body wrapping, so that any evidence shed from the clothing will not be lost
- f) make an examination of the body in a manner that both addresses all evidential issues that may be raised by the case and, if possible, ensures that the dignity of the deceased and ethical issues relating to the deceased and the family are accommodated
- g) be able to justify all examinations having regard to the context of the case and remembering that, in a criminal investigation, there may be interested parties other than the family (one party's needs must not be accommodated to the detriment of other parties)
- h) note any significant features of the body that reveal something out of the ordinary, whether or not they appear immediately relevant to the cause of death
- i) note if parts of the body have been examined and no abnormality found, because the negative finding may be equally significant
- j) where there are findings of apparent significance that can be demonstrated visually, ensure that photographs are taken so that others can see them for themselves at a later date

- k) retain any material relevant to the cause of death and/or which may assist in the resolution of issues (whether for inclusion or exclusion of possibilities) that foreseeably may arise during the investigation of the death, including those that can be anticipated at trial and
- l) ensure that all exhibit labels necessary to ensure the chain of custody of samples removed for evidential purposes are signed at the time required by SOCOs.

The pathologist must ensure that there is a full record of the details of the autopsy which documents both his own actions and those of others that may be significant to the pathologist's examination.

## 6.2 Code of practice

The Regulator and the College recommend that all pathologists follow the *Guidelines on Autopsy Practice* published by The Royal College of Pathologists in 2002.<sup>4</sup>

### 6.2.1 Approach to the autopsy

Having equipped himself as far as he can with information about the likely issues to be resolved, the pathologist will be ready to embark upon the actual examination. He will need to note any significant features of the body where his findings reveal something out of the ordinary, whether or not this appears immediately relevant to the cause of the death. He will also need to record carefully the fact that he has examined parts of the body and found no abnormality, because a negative finding may turn out to be as significant as one that is positive.

Techniques employed during the dissection, or during any subsequent investigation, should as far as practicable be accepted and well established procedures. The pathologist must be able to defend the use of any novel or unorthodox technique both to his colleagues and to the wider criminal justice system.

Wherever possible, and particularly where it is relevant to the investigation, the pathologist should have access to the medical history of the deceased before the autopsy is commenced. Where such records are not forthcoming, the pathologist will need to decide whether it would be sensible for the autopsy to be postponed until the information becomes available.

### 6.2.2 General considerations

The mortuary must be licensed by the Human Tissue Authority for the performance of post-mortem examinations and the pathologist must be covered by that licence. If the pathologist is not confident that these conditions are met he must not perform the examination.

The pathologist must, if requested, be able to establish his identity and his authority for performing the examination to the Designated Individual for the mortuary. The pathologist must act in accordance with the procedures established by the Designated Individual.

Post-mortem examinations should only be performed in facilities which meet the standards set out by the Regulator.

The pathologist should brief the anatomical pathology technologist (APT) on the nature of the case and his tasks. An experienced APT can assist with the dissection at the discretion of the pathologist, but must be under the direct control and supervision of the pathologist at all times.

Continuity of identity from the scene of discovery should be carried out at the start of the examination and the formal identity should be confirmed to the pathologist if the identity is known. If unknown, it should be identified by reference to where and when it was found. The individual identifying the body to the pathologist should be recorded and mentioned in the report.

The autopsy must be carried out in a manner consistent with medical ethics and respecting the dignity of the deceased. Proper consideration must be given to the needs and wishes of relatives and others who may wish to view the body. If practicable, consideration should be given to close relatives being given an opportunity to see the body before the autopsy, but only after relevant trace evidence has been taken. Before such a viewing is undertaken, there should be discussion between the pathologist, the SIO and the family liaison officer (FLO) so that the relative is fully informed, for example, of any features that might cause distress. If the viewing is to take place after the autopsy, the pathologist should consider whether any dissection, which may render viewing of the body by relatives distressing, may be postponed to a time when all such viewings have been made.

In suspected homicides, the SIO or an appropriately designated officer will normally be present throughout the autopsy so that he can appreciate the autopsy findings and answer any questions that may arise about the circumstances of the case.

Appropriate SOCOs should also be present. It is essential that all personnel present in the autopsy room should be subject to full precautions to protect them from infective hazards and to avoid any contamination of the body or clothing. The number of individuals in the autopsy room must be kept to a minimum.

### **6.2.3 Involvement of other specialists**

The pathologist must consider whether he has the appropriate expertise to perform an autopsy in the circumstance of that case and request the attendance of an appropriate expert if necessary. The pathologist must cooperate in an appropriate manner with such experts.

If investigation of the case requires the assistance of other specialists, for example a paediatric, cardiac or neuropathologist, it is the responsibility of the pathologist to make appropriate recommendations to the SIO or senior SOCO. If that expert cannot attend, the pathologist must seek advice from the expert to determine what material might be required for later examination and interpretation, and ensure it is recorded and/or preserved in an appropriate manner.

### **6.2.4 Photography**

It is the duty of the pathologist to advise the SIO with the aim that adequate photographs are taken of the whole body and of all wounds or other abnormal features before commencement of dissection. Photography in the mortuary should only be carried out under the supervision of the pathologist. Pathologists may take their own photographs, both at the scene and in the mortuary, but the report must indicate that such photographs exist. Their existence will be disclosed to the defence.

Where there are findings of apparent significance that can be demonstrated visually, these should normally be photographed so that others will be in a position to see for themselves at a later date. It will be particularly important to record the condition of the body in situations in which the examination will itself interfere with the finding and thus prevent anyone else from assessing the significance of the finding.

Where a photograph is to record detail (e.g. an injury) it should incorporate a scale.

The pathologist should arrange with the SIO and CSM that any additional photographs of the body taken by the police are provided to him.

### **6.2.5 Radiology**

Radiological examination should be part of the examination of all cases of suspected non-accidental injury in children and in all deaths involving firearms or explosives. It can also be of considerable assistance in the examination of badly burnt or decomposed bodies and may be appropriate in other instances. The pathologist will be responsible for advising on the need for such examination and for seeking the assistance of a consultant radiologist where necessary.



### **6.2.6 Autopsy notes**

Comprehensive contemporaneous notes are essential and must be taken of every procedure undertaken. Such notes may be written or dictated. Where appropriate, notes should be accompanied by diagrams.

Notes must include the time, date and place of the autopsy and the names of all those present, with an indication of the role of each one in the mortuary.

Where the pathologist does not produce the records he must ensure arrangements are in place with the mortuary or the police for the production of such records. The pathologist should not assume that police staff in the mortuary for other purposes will be available to create such records without prior agreement.

The notes or tapes (or where digital recorders are employed the original media file) must be retained as described above (see section 4, 'The briefing', and paragraph 5.2.4, 'Importance of notes'). Aside from their extreme importance to the pathologist involved, such notes may be required for peer review, audit or disclosure during criminal proceedings.

### **6.2.7 Removal of clothing**

Any clothing on the body must be removed carefully, preferably without cutting, and placed in appropriate bags with due care to avoid contamination. This should be done after trace evidence has been removed from the rest of the body, particularly the hands (unless they are bagged). Although detailed examination of the clothing is a matter for the forensic scientist, the pathologist should check it for damage such as cuts, which may influence the conclusions to be drawn from the examination of the body. Any such manipulation of the clothing should take place over the wrapping material so that any shed evidence is not lost. In some instances, tapings should be taken from the surface of the clothing before removal; this is usually done by a forensic scientist or SOCO. It is important in many instances that serial photographs should be taken as each garment is removed.

Adequate notes must be made of the procedure and the findings.

### **6.2.8 Collection of trace evidence from the body**

The pathologist must ensure, if all samples have not been taken at the scene, that there is no opportunity for contamination of the body from any fixture, fitting or person at the mortuary. Samples should be taken after discussion with the SIO and appropriate experts. Only where these discussions indicate that samples are not considered necessary should they be omitted; such discussions should be documented.

Where samples may be of value, reference should be made to the list of samples noted in paragraph 5.2.11, 'Taking of specimens at the scene'.

Clearly, in some cases the autopsy is not carried out until after a period in hospital, in which case the collection of some or all specimens may be pointless.

## 6.2.9 Autopsy procedures

### Measurements

Metric measurements should be used. Imperial measurements are still felt to be more readily understood by the court, especially in the case of larger measurements such as body height and body weight. The pathologist should consider providing metric equivalents to imperial measurements or incorporating a conversion factor in his report.

### External examination

The description of the body should include age, gender, build, height, ethnic group, weight, nutritional state, skin colour and special characteristics such as scars, tattoos, etc. Notes should also include the length, colour and distribution of hair and beard; and length of the fingernails.

The presence (or absence) and distribution of hypostasis should be recorded.

The presence (or absence) and distribution of petechiae should be recorded.

If not already dealt with at the scene, rigor mortis should be systematically tested for in the neck and in the extremities, if potentially of relevance to the case.

Signs of treatment should be recorded. Medical devices should not be removed from the body before the autopsy and the pathologist should endeavour to inform staff likely to handle such bodies of this requirement.

### Examination of injuries

All injuries must be described by shape, exact measurements, direction, edges and angles. The location relative to anatomical landmarks and, if appropriate, the height above the heel should be measured. In cases of multiple repetitive injury, it may be appropriate to describe groups of injury.

In the case of closed injuries, such as bruising, the colour should be noted. Local skin incision may be appropriate in the assessment of bruising.

The pathologist should, where possible, attempt to broadly age (differentiate between fresh and healing) injuries. In cases where the age of the injuries is important further histological examination should be considered. The limitations of such age assessments should be made clear in the report.

Skin reflection may be necessary in some parts of the body, but unnecessarily mutilating dissections and destructive examinations should be avoided. Any dissection that does take place must be of such type that the body can adequately be reconstructed. All dissection carried out at autopsy must be justified in the context of the case. There should be a low threshold for the examination of subcutaneous tissues of the trunk and upper limbs for evidence of bruising, particularly in dark-skinned individuals where bruising may not be apparent at the skin surface.

It is often important to dissect the face from the underlying facial skeleton. If the whole dissection is performed skilfully and carefully, the face can be replaced with little significant distortion.

### Internal examination

Pathologists should adhere to the *Guidelines on Autopsy Practice* issued by The Royal College of Pathologists.<sup>4</sup> The standard of internal autopsy dissection must be comprehensive. In addition to the forensic aspects of the examination, careful attention must be paid to any features that may be relevant to natural disease or medical intervention.

Incisions should be appropriate in relation to the nature of, and issues raised by, the case. Adequate measures must be taken to drain the neck before it is dissected.

The state of body cavities should be described and the amount of fluid in each cavity should be estimated and recorded. The quantity of blood (free and clotted) in the cavity should be measured. The measurement should be to a degree of accuracy appropriate to the issues in the case.

All organs must be dissected accurately and adequately described with weights. Other measurements should be recorded as appropriate.

Attention should be paid to the contents of the stomach and bladder. Where samples are taken (and toxicological analysis is likely) the quantity of recovered material should be estimated and recorded. In the case of stomach contents an estimate should be made of the proportion of the material present that was recovered. It may be useful to discuss the potential value of the stomach contents with the SIO.

Examination of the generative organs must not be omitted. The testes should be exposed and incised.

### **Collection of evidence**

The pathologist is required, by the provisions of the Coroners Rules, to retain material which bears upon the cause of death or the identity of the deceased.

The pathologist should also advise the police as to any material which he believes should be retained as evidence (to assist in establishing, or disproving, a particular fact or proposition). While it is for the police to determine what evidence is seized it is expected they shall act on the advice of the pathologist. The pathologist should assist the police in the collection of such evidence and may retain it for further examination.

### **Collection of internal specimens at autopsy**

The pathologist must ensure that all necessary samples are taken for toxicology and are properly preserved. He should, in cases in which the sampling is not routine, discuss with an experienced toxicologist what specimens may be required.

Blood for toxicology should be taken from an isolated peripheral vein. Other sites may be sampled as relevant. The site(s) of collection of blood samples must be noted.

Control samples, for example for DNA examination, should be collected and retained according to the instructions given by the responsible forensic science laboratory.

In addition, the pathologist must consider whether other types of microscopic or other laboratory examination will be necessary, and whether samples for these purposes should be taken at autopsy. In some circumstances, the pathologist will decide that tissues or organs need to be retained for later examination. In such instances, he must make appropriate arrangements, including any necessary discussion with the coroner responsible for the body.

### **Continuity**

Where samples are retained the pathologist must ensure that the evidential continuity of the samples and all results obtained from the samples can be demonstrated. Regard should be had to the document *Guidelines for Handling Medicolegal Specimens and Preserving the Chain of Evidence*, issued by The Royal College of Pathologists and Institute of Biomedical Science.<sup>6</sup>

### **Post-mortem histology**

A histological examination should be made, by the pathologist himself, of the major organs (assuming that they are not heavily decomposed) in all cases. Histology is of value in confirming, evaluating and sometimes revising the course of natural disease processes that may have contributed to the cause of the death. Other samples should be taken for histological examination depending on the circumstances of the case, e.g. for the purposes of ageing injuries. The reasons

behind any decision not to undertake a histological examination must be adequately recorded, in order that the pathologist may be in a position to defend this decision if required.

### **Health and safety issues**

The pathologist has a role in advising on health and safety in the post-mortem room. However, it is recognised that other professionals present will be expected to follow their own guidelines and the pathologist cannot be held responsible for any breaches in adherence to those guidelines by others present. The pathologist is expected to set an example in matters of health and safety.

The Designated Individual under the provisions of the Human Tissue Act 2004 is responsible for ensuring appropriate health and safety policies are in place. It is the responsibility of the APT, or other representative of the Designated Individual, to ensure those general policies are complied with. The pathologist must comply with those policies.

The health and safety issues with regard to the specific case must be assessed by the pathologist and the SIO, or his representative, before the examination begins.

All those involved will be expected to take very serious account of the pathologist's directions, particularly when dealing with a recognised or potential high-risk case.

A properly trained APT should be in attendance.

The Health and Safety Executive's (HSE) view is that any autopsy where 'infective disease cannot safely be excluded' should be treated as a high-risk case, and this will include a high proportion of suspected homicides. The pathologist should take careful account of local standard operating procedures.

### **Retention of material after autopsy**

Unnecessary or ill-considered retention of material removed at autopsy has caused considerable distress to bereaved relatives, and the pathologist must consider very carefully whether such material needs to be retained and for what purpose. At present, in criminal cases, retention is referred to in Rule 9 of the Coroners Rules 1984, which states:

"A pathologist shall make provision, so far as possible, for the preservation of material which in his opinion bears upon the cause of death or the identification of the deceased".

Similar provisions, in relation to material subject to a special examination, are provided in Rule 12.

The Criminal Procedure and Investigations Act 1996 requires that any material obtained in the course of a criminal investigation and which may be relevant to the investigation should be retained until the end of criminal proceedings and following completion of any appeals procedure. In general terms, this may be interpreted as the release from detention of a person convicted of homicide.

Certain organs can only be fully examined if they are retained after the autopsy is otherwise completed. For example, the brain will usually be fixed in cases in which there may be some brain abnormality, such as following head injury. It should be the duty of a police representative (for example, a family liaison officer) or the coroner or his officer, to explain the reason for this to the appropriate relative.

The pathologist must document what material has been retained and inform the coroner and police through locally determined procedures. It should also form part of his report. The record of retained material should, unless the police direct otherwise, be provided to the Designated Individual for the mortuary or his nominee.

Any materials retained must be kept in secure storage and under suitable conditions. Its whereabouts must be properly recorded and indexed in order to ensure easy access.

Consideration should be given to making a listed exhibit of any material from the autopsy that it is essential to retain.

The retention of tissue on behalf of the coroner must comply with the provisions of the Human Tissue Act 2004. The retention of tissue by, or on behalf of, the police is not, generally, subject to the provisions of the Act. Guidance has been issued on this matter by the Home Office.<sup>7</sup>

### Non-invasive examinations

The Regulator and the College do not consider the use of non-invasive examination methods, by themselves, sufficient in cases involving violent or suspicious deaths.

## 7 The pathologist's autopsy report

### 7.1 Standard

The pathologist will:

- a) produce a formal report that will record:
  - i) the information the pathologist received in advance of the autopsy
  - ii) that the data justifying decisions and actions taken at the examination of the scene and the body has been retained
  - iii) all investigations made either personally or by submission to a laboratory for report
  - iv) conclusions and an explanation for those conclusions - where unusual features are found but are concluded not to be relevant, the pathologist must explain why the finding has been discounted
  - v) the reasoning underlying why, where findings are susceptible of alternative explanations, one explanation is favoured
  - vi) the reasoning that supports conclusions, detailing all material drawn upon to support that reasoning, including reference to pertinent and current literature
  - vii) all samples that have been retained by the pathologist, whether or not these have been assigned police exhibit references
  - viii) any other information required under the Crown Prosecution Service guidance on expert witnesses' obligations on disclosure (Annex K of the CPS Disclosure Manual)
- b) ensure the report meets the requirements set out in Part 33 of the Criminal Procedure Rules
- c) have in place, for **all** cases involving violent or suspicious death, a critical conclusions check procedure, whereby another suitably qualified forensic pathologist (on the Home Office Register where the initial pathologist is registered) scrutinises the report to ensure that (i) the report is internally consistent, (ii) the conclusions drawn are justifiable from the information set out in the report and (iii) the report is capable of being understood without reference to other material
- d) ensure the report states a critical conclusions check has been performed but not make any suggestion of support from the person performing the check
- e) take responsibility for identifying complex cases in which more detailed peer review, whereby another suitably qualified forensic pathologist (on the Home Office Register where the initial pathologist is registered) scrutinises the report and, where appropriate other materials, may be necessary to ensure that the conclusions reported by the pathologist conform to the requirements given above, and have in place such a peer review procedure. This may be a review by an individual or a review at practice meetings
- f) ensure that, where the critical conclusions check or any other peer review procedure reveals significant disagreement, this is communicated to HM Coroner and the SIO

- g) produce the report as quickly as is possible, after production of necessary analytical reports, with regard to the complexity of the case and within an agreed timescale, depending on the investigations and expertise required
- h) make the SIO and/or Crown Prosecution Service aware of a provisional timetable for the production of the report in complex cases, to allow them to meet the requirements of s51, Crime and Disorder Act 1998
- i) consider additional information revealed by investigations after the provision of a report and, where necessary, produce a supplementary report incorporating that information and drawing further conclusions
- j) ensure that the detail within any report reflects standards and minimum datasets contained in relevant and current guidance and
- k) the use of staged reporting is being developed and forensic pathologists should comply with standards determined by the Regulator when these are issued.

## 7.2 Code of practice

### 7.2.1 General comments

The standard sets out what must be included for the production of scientifically valid and impartial reports which are appropriate for use within the criminal justice system. It is not the purpose of the code to prescribe the format and style of reports prepared by pathologists. Whilst there are legal requirements which must be complied with it is for the pathologist to decide on the nature of the report.

In general terms, the report or statement must be clearly laid out, section by section, in an easily read format. The following sequence is recommended:

- the qualification, experience and accreditation of the pathologist
- report preamble
- history (see below)
- scene examination
- external examination
- internal examination
- supplementary findings and additional investigations (histology, etc.)
- commentary and conclusions
- cause of death
- note on retention of samples, and list of samples retained and
- a declaration of truth (where the report is to be used within the CJS).

The essence of the report of an expert witness is that it should be easily read and unambiguous. The report, and in particular the commentary or conclusions section, must be intelligible and easily understood by non-medical people, so as to render it suitable for presentation in court. It should be clearly divided into sections and, where appropriate, subsections. The language should be as straightforward and as simple as possible, whilst nevertheless retaining complete accuracy and balance and being sufficiently detailed to allow other medical experts to fully comprehend the abnormality or injury being described.

It should be remembered that decisions with serious legal implications may be based partly, or even solely, on the pathologist's report. It must be sufficiently detailed to allow these decisions to be made. In view of this, it must be written in a fair and impartial manner, having taken into account all the relevant issues of the case.

## 7.2.2 Rapid interim account

Where the pathologist has agreed with the coroner, the police or the CPS that a rapid briefing, in the locally agreed format, should be provided he shall submit one within 14 days of the post-mortem examination to both the coroner and the SIO.

The rapid interim account shall, normally, set out the following information.

- A summary of the main findings of fact determined at the post-mortem examination.
- The provisional cause of death (if this can be provided at that time).
- The samples retained at the post-mortem examination.
- Any samples retained at the post-mortem examination which were left at the mortuary.
- Any additional examinations/investigations which are to be undertaken (with estimated timescales if known).
- It shall make clear the briefing contains information which may change as investigations progress and additional information becomes available.

It may contain advice to the police on matters that may be relevant to the investigation.

It shall not contain any final conclusions and, as a consequence, is not subject to the requirement for critical conclusions check.

## 7.2.3 Report preamble

The report preamble must set out the full name, age, etc. of the deceased, together with the date, time and place of the autopsy. The pathologist's name, qualifications and appointment must be stated.

In order to properly identify all the circumstances surrounding the autopsy, the report should also include the names of:

- the coroner on whose instructions the autopsy is being performed
- the person identifying the body to the pathologist
- any senior police officers and/or medical observers present and
- the names of police photographers, scenes-of-crime officers or any other persons present.

## 7.2.4 History

The pathologist should summarise in his report the information that he was given before the autopsy was performed, and should identify the sources of such information. The inclusion of background information, such as the deceased's duration in hospital and/or the treatment given prior to death, can be of considerable assistance to those reading the report, whether lawyers preparing a case for court or medical colleagues who may be asked to comment.

Much of this information is likely to have been provided to the pathologist during his initial briefing; it will also come from the deceased's medical history. Proper recording of this information is essential and reference should be made to section 4, 'The briefing', and paragraph 5.2.4, 'The importance of notes', above.

The inclusion of a history has been discouraged by certain coroners. The Regulator and College do not regard this as satisfactory and consider it essential that the pathologist's report be complete and able to stand alone. However, it is recognised that the history is essentially 'hearsay evidence', rather than reflecting the pathologist's own experience of the case, and the report should make quite clear the status of this information.

The report must make clear which facts are within the knowledge of the pathologist.

### **7.2.5 The scene of discovery of the body**

The record of the scene visit must include a note of the date and time of arrival at the scene, a note of the location and a general description of the locus and the body.

A note must be made of recordings taken (e.g. environmental and body temperatures) and of any samples, etc. taken prior to removal of the body.

### **7.2.6 External appearance of the body**

It should commence with a note of the state of the body as received in the mortuary and a description of the presence of any blood staining, etc. An inventory must be made of the clothing as it is removed from the body. Within this section should be a note of the height, weight and build of the individual. The presence and extent of rigor mortis should be tested for and noted if relevant. The position of hypostasis should be recorded. The limitations of any conclusions drawn from body temperature, rigor mortis or hypostasis should be made clear in the report.

Mention should be made of the hair, eyes, ears, nose, mouth, scars, tattoos, fingernails, etc., even if these are normal. Negative findings, e.g. the absence of petechiae in the eyes in suspected strangulation, are just as significant as positive ones.

### **7.2.7 Injuries**

Injuries, no matter how trivial, must be described in detail using recognised terms, with measurements given. The position of injuries must be described with reference to appropriate anatomical landmarks and in some instances with reference to the height above the heel. The description must include the type of injury and an indication as to whether it is of recent origin. A numerical identification system may be particularly useful where reference is to be made to specific injuries in other parts of the report. It may be helpful to record the injuries on an outline body chart, as this may assist the pathologist and others in any subsequent discussion of the case.

A separate section of the report dealing specifically with injuries may prove to be the easiest way of recording these findings, including both external and internal features. It is best to describe the major injuries first and/or to group injuries according to type or anatomical location.

### **7.2.8 Internal examination**

The internal examination must follow the recommendations in the College's *Guidelines on Autopsy Practice*.<sup>5</sup> For ease of reading, the report should be divided into sections, each with an appropriate subheading.

Particular attention should be given to those organs that are diseased or injured. Also included would be the presence or absence of skeletal injuries, e.g. skull fractures. Where features out of the ordinary are found and the pathologist concludes that they are not relevant, the reasons for discounting these findings must be explained.

In addition to a full description of all the major organs, their weights should be recorded. Descriptions should be objective.

### **7.2.9 Supplementary examinations**

Included in this section would be the results (if they are available) of toxicological analyses, X-rays, neuropathology, histology and the results of any other tests or examinations that were carried out.

Where test results or any other finding is included in the report, it must be made clear (whenever the work is that of another person) who has made the finding or produced the results.



The pathologist must ensure that all tests which he performs or commissions, whatever the results subsequently obtained, are listed and revealed to those instructing him.

### **7.2.10 Commentary and conclusions**

In this section, the pathologist should attempt to explain in easily understood language the cause and mechanism of death, as well as other relevant findings. This must be set out clearly and in a comprehensive manner to allow interpretation of the information by the police, coroner, Crown Prosecution Service and counsel. The opinions expressed must be fair and unbiased and under no circumstances should be written to assist one side rather than the other. No information that may have a significant bearing on the death should be excluded, for instance in order to shorten or simplify the report. When giving opinion, the pathologist must state clearly where that opinion is based on his own work and where it relies heavily on the work, pathological findings, test results, etc. of others. He should also make clear all literature or other material relied upon.

A good, well thought out commentary will be invaluable in many circumstances in allowing the Crown Prosecution Service to decide whether to proceed with a prosecution. This may have significant ramifications, e.g. in facilitating the release of a prisoner in custody or preventing a potential miscarriage of justice. There may also be financial implications if a decision is taken not to proceed with a case.

Where appropriate, comments should include details such as the amount of force likely to have been used, the type of weapon, the direction of injuries and the probable rapidity of death. In circumstances in which an assessment of the likely time of death is required, it must be given with adequate and defensible margins.

The conclusions reached following an examination should be clearly set out in the report and it would usually be appropriate to give the reasons for reaching these conclusions. It is also important to give some indication of the limits of reliability of such conclusions, and possible alternate explanations or opinions should also be given. Where features out of the ordinary are found and the pathologist concludes that they are not relevant, the reasons for discounting these findings must be explained.

From the scientific findings, the pathologist may be able to construct a picture of the sequence of events that occurred. However, the pathologist must clearly state how much of this is speculation. Should the findings suggest more than one picture of the sequence of events, then all the relevant scenarios must be stated.

In presenting the conclusions the forensic pathologist must comply with the requirements of Part 33 of the Criminal Procedure Rules. In particular he should:

- where there is a range of opinion on the matters dealt with in the report (i) summarise the range of opinion, and (ii) give reasons for his own opinion
- if he is not able to give his opinion without qualification, state the qualification
- provide a summary of the conclusions reached
- make a statement that he understands his duty to the court, and has complied and will continue to comply with that duty and
- make clear that he may change his opinion and will inform parties and the court should that happen.

### **7.2.11 Cause of death**

This should be given in the usual manner as prescribed by the Registrar General, i.e. 1(a) .... , due to 1(b)....., II....etc. Since this system may not be familiar to lawyers and others who will read the

report, it may be important to elaborate on this information, for instance in the conclusion section of the report and, if appropriate, when giving evidence in court.

If, having considered all the evidence, no cause can reasonably be found for the death, then the pathologist must record it as 'unascertained'.

### **7.2.12 Retention of samples**

The report must clearly indicate what material has been retained and submitted for further scientific examination, e.g. blood samples, swabs, etc. If these items are exhibited, the exhibit number must be noted in the report.

It is essential to include a list of any organs, such as the brain, retained for further examination, together with a note indicating where they are stored.

If no organs are retained, a simple statement to this effect in the report is beneficial.

### **7.2.13 Final check**

Before the report is signed and issued, the pathologist must check it for errors such as typographical and grammatical mistakes. Simple mistakes, such as the substitution of 'left' for 'right' or 'millimetres' for 'centimetres', may significantly alter the interpretation of a finding by the reader. Furthermore, a poorly presented report with multiple errors gives the impression of a lack of care or interest in the completion of the report and, by inference, in the conduct of the autopsy and in the interpretation of the findings.

### **7.2.14 Time of submission of the report**

The report must be submitted to the coroner and a statement made to the police as soon as is practically possible. In some instances, it is appropriate to submit a preliminary report, detailing as far as possible the expected timing of pending interim and final reports. If there is to be a significant hold-up, the reasons for this should be given and explained. Normally, delays should only be those occasioned by the need for time-consuming special investigations, such as toxicology, neuropathology or cardiac pathology. Routine histology should not be a reason for significant postponement of a final report. However, it is preferable that the report should be as detailed and comprehensive as possible, even if this does cause some delay in its completion. In most instances, this will be more helpful to the user than the issue of multiple supplementary reports or statements.

### **7.2.15 Disclosure of information to the defence**

There is a duty on the pathologist acting for the Crown to notify the police and the Crown Prosecution Service of the existence of any 'unused' material. Such material may, in certain circumstances, be disclosed to lawyers acting for the defendant in a criminal trial. As well as samples taken at autopsy, such material will include notes made during the course of the examination, reports and the first drafts of statements. If a pathologist is in doubt as to what constitutes 'unused' material, and what his duties are with respect to such material, advice must be sought from the Crown Prosecutor.

The overriding duty of the pathologist is to the Courts and to assist in ensuring cases are dealt with justly. This requires that all findings are disclosed to the prosecution so it can fulfil its disclosure duties. It also means that all materials created or held by the pathologist are available for disclosure to the defence and, where appropriate, retained so as to be available in any future consideration of the case (e.g. appeal or investigation by the Criminal Cases Review Commission).

To achieve these requirements all materials retained at the conclusion of the case must be held in a storage facility which meets the following requirements.

- the storage must be sufficiently secure to ensure that the continuity requirements of the CJS can be maintained

- the management of the store must be such that continuity can be established if required
- the conditions of storage must be suitable for the material being stored and ensure that it will, as far as practical, be maintained in an appropriate state across the storage period
- the material must be retrievable routinely within a period of days and in urgent cases within hours
- the storage facility must have procedures in place for reviewing the retention of materials and disposing of material when the retention periods have expired.

The achievement of the requirements should not be dependent on the availability of the pathologist.

In England and Wales storage forms part of the financial model which underpins the provision of forensic pathology services.

### **7.2.16 Change of opinion**

Where a pathologist wishes to change the view expressed in a statement or report, and the circumstances allow, this should be achieved by issuing a new statement/report which sets out the new position taken by the pathologist and the reason for the change of position. Pathologists must not issue a re-worded report/statement without making clear why that has been done.

### **7.2.17 Views of others**

Where, during an examination performed by the pathologist, another expert (e.g. a pathologist acting for the defence) agrees with the findings of fact it is acceptable to state in the report that there was such an agreement. The pathologist can give evidence about such an agreement because he was present at the time the findings were confirmed. It should, therefore, be clear that the report refers to the fact that the agreement occurred.

However, the formation of an opinion on the significance of findings can be subjective and may be subject to change after further consideration. Accordingly it is not acceptable to state that the other expert is in agreement with his/her opinion of the findings except in the specific circumstances set out below.

Where an expert has set out his views/opinions in admissible evidence it is acceptable to include a statement in a report that these are his views/opinions. Otherwise the pathologist should not, subject to the point below, state a position on the views or opinions of another expert. The reasons are that (a) the pathologist cannot be confident of the views/opinions of another and (b) it risks adducing expert evidence by an unorthodox route.

In this area the provisions of Part 33.3(d) of the Criminal Procedure Rules 2011 is relevant. This requires a clear statement of what information is within the knowledge of the person making the report.

Where a report is prepared under part 33.6 of the Criminal Procedure Rules (e.g. setting out areas of agreement and disagreement between experts), or similar provisions, but written by one of the experts it is acceptable to discuss the reviews of the other experts involved – as long as it is an accurate representation of their views.

## **8 Conferences and other subsequent action**

### **8.1 Standard**

The pathologist will:

- a) attend any conference called by the police or CPS to discuss the pathologist's report or other issues involved in the case
- b) explain clearly all findings and their interpretation in the context of the case
- c) consider alternative explanations, test alternative hypotheses, draw conclusions and give advice based on the facts of the case and established scientific principles
- d) state what is required before additional conclusions can be drawn and demand that those requirements are fulfilled before any additional conclusions are drawn
- e) identify, clarify and summarise areas of agreement and disagreement and
- f) seek feedback to determine whether those involved understand the outcomes of the consultations.

The pathologist must record all relevant information and discussions as accurately and comprehensively as circumstances allow or ensure such a record is prepared.

## **9 The pathologist and the defence**

### **9.1 Standard**

The pathologist will:

- a) make every attempt to attend, where requested, any additional autopsy made by a pathologist retained on behalf of any person charged in relation to the death (the 'defence pathologist')
- b) make available to that defence pathologist, with the approval of HM Coroner and, where relevant, the police and Crown Prosecution Service a record of all findings made at the post-mortem examination, results from subsequent examinations and a copy of any report or draft report
- c) ensure that the existence of all the material in the pathologist's possession – and any report arising from any further investigation – is, with the approval of HM Coroner and, where relevant, the police disclosed to any defence pathologist and
- d) within any restrictions imposed by the coroner, the police or the Crown Prosecution Service work with the defence pathologist to identify areas of agreement and those areas of difference.

## 9.2 Code of practice

Although this code has been written primarily from the standpoint of the pathologist instructed by the Crown, practitioners should also be aware of the needs of lawyers who may be instructed by other parties, for instance, those defending an accused person.

Where a second autopsy is to be carried out, the Crown pathologist should share all the information that he has obtained, whether or not he has concluded that it provides an explanation for the death. The initial autopsy may have caused changes to the body that will obscure findings made during the course of that examination. It may also prevent the observation of other significant features. There is also a clear responsibility to avoid any interference with the body unless it is necessary to reach a proper understanding of the death.

In order to facilitate an autopsy examination conducted on behalf of the defence, the pathologist acting for the Crown must ensure that all specimens retained following the first autopsy have been preserved under the best possible circumstances. These specimens must be made available to the defence pathologist. If they are retained after any defence examination, possession of these exhibits must remain with the Crown pathologist unless otherwise directed by the Court or by agreement with the CPS. The pathologist acting for the Crown should be given the option to attend any examinations conducted on behalf of the defence.

If, during the second autopsy, a previously unrecognised finding is discovered by the second pathologist, this should be recorded as appropriate and discussed with the pathologist who carried out the first autopsy.

When a pathologist is instructed by the defence the same standards shall apply. While the circumstances may be different, in that the pathologist will usually be examining a body on which an autopsy has already been performed, as far as possible the same high standards must be applied to any examination undertaken.

References to a pathologist acting for the defence should be interpreted to include a pathologist performing a second post-mortem examination on behalf of the coroner – for example to facilitate the release of the body.

## 10 Attendance at court

### 10.1 Standard

The pathologist must:

- a) ensure that he is well prepared prior to attendance at court to give evidence
- b) ensure that all documentation relevant to the case is brought to court
- c) ensure that appearance and behaviour conform to acceptable professional standards
- d) deliver evidence in an audible and understandable manner
- e) give evidence consistent with the contents of the written report
- f) deal with questions truthfully, impartially and flexibly
- g) identify questions that are unclear and clarify these before offering a response
- h) give answers to technical questions in a manner understandable by those who have no technical or scientific training
- i) differentiate between facts and conclusions drawn from those facts, and ensure that any such conclusions lie within his or her field of expertise

- j) consider additional information or alternative hypotheses that are presented and, where warranted, modify conclusions already drawn and
- k) where it appears that a lawyer has misunderstood or is misstating evidence, ensure that the court is made aware of that misunderstanding or misstatement.

## 10.2 Code of practice

Pathologists must ensure that they are appropriately prepared prior to attending court to give evidence. A copy of the pathologist's autopsy report, together with all contemporaneous notes, should be taken to the court. The evidence must be objective and fairly presented and attention must be drawn to any areas of speculation. Proper and objective consideration must be given to any interpretations or conclusions fairly raised by the defence, particularly if they are supported by their own expert opinion.

The role of the expert witnesses is not to provide evidence that supports the case for the Crown or for the defence. Opinions must be objectively reached and have scientific validity. Witnesses must make it clear which part of their evidence is fact and which is opinion. The evidence on which that opinion is based must also be available.

Facts may emerge during the course of an investigation, sometimes even during the course of the trial, which may make the pathologist modify a previously held opinion. The pathologist has a duty to give any new facts due consideration and ensure that his or her evidence remains objective and valid. If previously held conclusions can no longer be substantiated, any change of opinion must be promptly and clearly stated, irrespective of any possible embarrassment. Delay will not only potentially harm the administration of justice but will reflect adversely upon the reputation of the pathologist.

The pathologist should be willing to discuss the case with counsel and other experts at the court.

## 11 References

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## 12 Membership of author groups

### Home Office Policy Advisory Board for Forensic Pathology Scientific Standards Committee, 2004

Dr H Millward-Sadler, Chair	Southampton
Dr A Anscombe	Dorset
Dr N Cary	Peterborough
Professor J Crane	State Pathologist, Northern Ireland
Dr W Lawler	Cumbria
Mr NL Rheinberg	HM Coroner for Cheshire
Dr H White	Bristol
Professor H Whitwell	Sheffield

### The Royal College of Pathologists' Forensic Pathology Sub-Committee, 2004

Professor H Whitwell, Chair  
Dr P Acland  
Dr C Bouch  
Dr C du Boulay  
Professor R Forrest  
Dr R James  
Dr S Kolar  
Professor C Milroy  
Dr T Rothwell  
Mr G Ryall

### The Forensic Science Regulator's Forensic Pathology Specialist Group, 2009–2012

Dr H Millward-Sadler	Chair
Mr M Bottomley	ACPO
Ms C Browne	Human Tissue Authority
Dr N Cary	British Association in Forensic Medicine (forensic pathologist from the South East)
Ms L Cockburn	Crown Office and Procurator Fiscal Service
Professor J Crane CBE	State Pathologist for Northern Ireland
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Ms A Harrison OBE	National Policing Improvement Agency (representing the Pathology Delivery Board)
Dr P Johnson	Royal College of Pathologists (forensic pathologist from the North West)
Mr D Jones	National Policing Improvement Agency
Mr C Kettley	National Policing Improvement Agency
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Dr C Wilson	British Association in Forensic Medicine (forensic pathologist from the North West)
Dr J Adams	Home Office

**The Royal College of Pathologists  
Forensic Pathology Sub-Committee, 2009–2012**

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