

Forensic Science Regulator

Guidance

**Information to be Included in the ‘History’ Section
of a Forensic Pathologist’s Report**

FSR-G-210

Issue 2

© Crown Copyright 2020

The text in this document (excluding the Forensic Science Regulator’s logo, any other logo, and material quoted from other sources) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown Copyright and its title specified. This document is not subject to the Open Government Licence.

1. Purpose

- 1.1.1 The Forensic Science Regulator commissions a regular audit of the work of forensic pathologists. The audits prior to 2014 highlighted significant variation in the content and nature of the reports in relation to the “history” section.
- 1.1.2 The purpose of this document is to provide guidance on the content of the history section of the report.

2. Scope

- 2.1.1 As noted above this document was prepared in response to issues raised during the audit process about the 'history section’ of the pathologist's report. In the review of the audit it became clear that:
 - a. The State Pathologist’s Department in Northern Ireland already had an agreement with the Public Prosecution Service which addressed these matters; and
 - b. The position in Scotland was addressed in a different manner.
- 2.1.2 This guidance was therefore developed to apply in England and Wales only and was reviewed by the Crown Prosecution Service.

3. Implementation

- 3.1.1 Issue 2 of this document became effective on 31 August 2020.

4. Modification

- 4.1.1 This is the second issue of this document.
- 4.1.2 Significant changes to the text have been highlighted in grey
- 4.1.3 The modifications made to create Issue 2 of this document were, in part, to ensure compliance with The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.¹

¹ To facilitate compliance with the Regulations changes to the document are noted here. The following sections of the document have been changed – 3.1.1, 4.11, 4.12, 4.13, 4.14, 4.15, 4.1.6, 5.1.2, 5.1.4, 5.1.5, 5.1.8, 5.1.9, 5.1.12, 5.1.13, 8 and 9. The following footnotes have been altered – 1 and 2.

4.1.4 The Regulator uses an identification system for all documents. In the normal sequence of documents this identifier is of the form 'FSR-#-###' where (a) the '#' indicates a letter to describe the type or document and (b) '###' indicates a numerical, or alphanumerical, code to identify the document. For example, the Codes are FSR-C-100. Combined with the issue number this ensures each document is uniquely identified.

4.1.5 In some cases, it may be necessary to publish a modified version of a document (e.g. a version in a different language). In such cases the modified version will have an additional letter at the end of the unique identifier. The identifier thus becoming FSR-#-####.

4.1.6 In all cases the normal document, bearing the identifier FSR-#-###, is to be taken as the definitive version of the document. In the event of any discrepancy between the normal version and a modified version the text of the normal version shall prevail.

5. Guidance

5.1 General

5.1.1 The forensic pathologist does not operate in a vacuum. Before undertaking a post mortem examination the pathologist will be briefed by police officers or others involved in the investigation. Every examination must be approached with an open mind; nevertheless it is quite likely that this briefing may in some way influence the approach to the examination.

5.1.2 It is important that the report issued by the pathologist contains relevant details of the history of the case, from whatever source it may have come. The Code of Practice [1] contains advice on what should be included (see section 7.2.4 of the Code):

“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. “

5.1.3 This makes clear the importance of recording the information provided. However, not all of this information will result from the pathologist's own knowledge or observation; much of it will have been provided from other sources. It will accordingly have the status of hearsay evidence, the inclusion of which in an expert's report has not always been acceptable. To refer to the Code of Practice [1], at section 7.2.4, again:

"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."

5.1.4 Thus it is now agreed that the report should contain **relevant** detail of the background to the case. In addition to being agreed by the profession the inclusion of such information is a requirement of the Criminal Justice System. Part **19.4** of the Criminal Procedure Rules [2] requires an expert's report to include a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based.

5.1.5 While the 'history' section of the report should set out all relevant material it should be as concise as possible. Depending on the circumstances of the death this will include at least some of the following classes of information, which may have been given to the pathologist orally or in written form.

- a. Briefing material provided by the investigating team.
- b. Clinical data amassed during treatment prior to death.
- c. Observations made by **persons providing assistance or treatment to the complainant prior to arrival at hospital.**
- d. Information determined from eye witnesses or CCTV.
- e. Information derived from the examination of exhibits (e.g. weapons).
- f. Information provided by other experts e.g. forensic scientists.

5.1.6 Information of the type described above may include where the deceased was found, what the conditions were at the scene, whether homicide was suspected, and where the investigation itself stands (for example, whether there was evidence of multiple assailants or different weapons). Briefing from the

investigating team will always be vital and may be particularly so where the pathologist has not actually visited the scene of the death.

- 5.1.7 Clinical data may be important, for instance, where a deceased has undergone medical treatment for some time prior to death. Other experts may also be able to shed light on the circumstances surrounding the death. All of this information may be useful to the pathologist in planning the way in which the examination will be undertaken.
- 5.1.8 Information from medical records should be quoted in reports carefully and when it is relevant to the case. The confidentiality of the deceased should be protected to the extent that is possible while protecting the interests of the Criminal Justice System. Where the information is an extract this should be clear from the report.²
- 5.1.9 In the pathologist's report it will sometimes be appropriate to refer to statements made by other witnesses involved in the case, because what they say may bear on the examination. In such circumstances the source of the information should be identified but it must be clear that the pathologist is not providing the information to establish, or suggest, its truth. Appearing to offer evidence on behalf of another individual is not usually acceptable within the Criminal Justice System. The Regulator has issued guidance on the content of expert report [4].
- 5.1.10 It is essential the post mortem examination be approached with a completely open mind, whatever information has been given to the pathologist about the possible scenario. Those in charge of the investigation may have suggested a particular course of events but if the pathologist's findings point in some other direction then this must be stated in the report. Information provided at briefings is not always accurate; it will simply reflect what is known at the time.
- 5.1.11 The history should state the information available to the pathologist in the light of which the examination was carried out. Sufficient must be included in the report to ensure the reader is aware (a) of the context in which the examination was performed, (b) of the information which had an impact on the examination and interpretation and (c) that the requirements of the Criminal Procedure Rules

² The General Medical Council has issued guidance in this area [3].

are met. At the same time the pathologist should avoid the inclusion of information which, at the time the report is prepared, does not appear to be, or likely to become, relevant or required. Should such excluded information subsequently become relevant then this should be included as a separate statement rather than modifying and reissuing the original history.

5.1.12 Inclusion of the date/time information was provided to the pathologist may be of use as it places the decisions of the pathologist in context.

5.1.13 While certain facts will be within the pathologist's own direct knowledge and observation, some will have originated from others and these, accordingly, cannot be vouched for by the pathologist. Part 19.4(d) of the Criminal Procedure Rules requires that the pathologist's report makes clear which of the facts stated in the report are within the expert's own knowledge

5.1.14 The provider(s) of the information should be identified, for instance, 'In a briefing given by the Senior Investigating Officer'.

5.1.15 The primary purpose of the history is to record as concisely as possible the background against which the investigation was pursued by the pathologist, and to do this in a manner which will illuminate the circumstances to all those who will have to use the report. As such it provides an essential introduction to the pathologist's report.

5.2 Other Jurisdictions

5.2.1 The foregoing advice applies to the Criminal Justice System within England and Wales. Elsewhere other procedures may apply. For instance, it may be usual for police investigating officers themselves to provide the prosecuting service with a document outlining the information given to the pathologist. This may render superfluous any detailed history in the pathologist's report itself. The report however should refer to the existence of such a document in order that the prosecuting authority is made aware of the extent of the briefing given to the pathologist. It is also advisable for the pathologist to include sufficient information to ensure that their own report is adequate as a stand-alone document.

6. Acknowledgement

- 6.1.1 The College and the Regulator would like to acknowledge the assistance of the following in the production of this guidance.
- a. The Specialty Advisory Committee on Forensic Pathology of the Royal College of Pathologists.
 - b. The Forensic Pathology Specialist Group, and in particular Dr Rothwell OBE.

7. Review

- 7.1.1 This document is subject to review at regular intervals.
- 7.1.2 If you have any comments please send them to the address or e-mail set out on the Internet at URL: www.gov.uk/government/organisations/forensic-science-regulator

8. References

- 1 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
- 2 The Criminal Procedure Rules.
- 3 **Managing and protecting personal information; General Medical Council. Available at www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/managing-and-protecting-personal-information. [Accessed 20 June 2020].**
- 4 **Expert Report Guidance; FSR-G-200; Forensic Science Regulator.**

9. Abbreviations And Acronyms

Text	Meaning
OBE	Officer of the Most Excellent Order of the British Empire
CCTV	Close Circuit Television
SI	Statutory Instrument
URL	Uniform Resource Locator

Published by:

The Forensic Science Regulator in partnership with the Royal College of Pathologists
5 St Philip's Place
Colmore Row
Birmingham
B3 2PW

www.gov.uk/government/organisations/forensic-science-regulator