

Inspectorate of Prosecution in Scotland

Thematic Report on Organ Retention

July 2014

CONTENTS	Page(s)
Chief Inspector’s Foreword	4
Executive Summary	5
Key Findings	5
Summary of Recommendations	6 – 7
Part 1: Introduction and Background	8 – 10
Investigation of Deaths by the Procurator Fiscal	8 – 9
Hospital Post-Mortems	9
Aims and Objectives	9
Methodology	10
Acknowledgement	10
Part 2: Investigation of Deaths, Post-Mortems and Organ Retention	11 – 19
Legal Obligations	12 – 13
Definition of an Organ	13
Retention of an Organ or Organs	14
Forensic Pathology	15 – 16
COPFS Guidance	16 – 17
Scottish Fatalities Investigation Unit (SFIU)	17
Training	18 – 19
Part 3: Case Review	20 – 24
Analysis of Cases where Nearest Relatives were Not Notified	20 – 21
Suspicious Deaths	21
Federation Protocols and Practices	21 – 22
Homicides	22
Revised Guidance	22 – 23
Role of SFIU and Homicide or High Court Teams	23 – 24
Part 4: Processes and Procedures	25 – 29
Authorisation	25
Medical Certificate	25
Release of the Deceased’s Body	25
Organ Retention Database	25 – 26
Organ Retention Notification	26
Recording Procedures	26 – 27
Responsibilities of Pathology Service Providers and COPFS	27
Reconciliation Process	28 – 29
Part 5: Provision of Pathology Services	30 – 32
Contractual Provisions	32

Part 6: Communication with Nearest Relatives	33 – 38
Equality Act 2010	33
Equality and Diversity	33 – 34
Liaison with Bereaved Relatives	34
Publications	34 – 35
Liaison in Non-Suspicious Deaths	35
Liaison in Suspicious Deaths	36
Notification of the Retention of an Organ	37
Disposal Options	37 – 38
Annex A – England and Wales and Northern Ireland (E&W and NI)	39
Audit of Organs	39
Annex B – Definition of Organs	40
Home Office Classification	40
Royal College of Pathologists	40
Human Tissue Act 2004	40
Annex C – Organ Retention Flowchart	41
Annex D – Guidance, Aids and Services	42
COPFS Guidance on the Investigation of Deaths	42
Aids and Services to Meet Service Users’ Needs	42
Annex E – Glossary of Terms	43 – 45

Chief Inspector's Foreword

This is the 20th thematic report of the Inspectorate of Prosecution in Scotland. It deals with the particularly sensitive and emotional issue of organ retention. The distress caused to bereaved relatives who learn that a family member was buried or cremated without a significant organ cannot be overstated.

The public must have confidence that the examination of a body after death is conducted in a respectful manner and the nearest relatives are informed if an organ or significant body part has to be retained and of the reasons for the retention.

The importance of liaising with nearest relatives in an appropriate and timely manner and ensuring that post-mortem examinations are dealt with professionally and sensitively has been embedded in internal Crown Office and the Procurator Fiscal Service (COPFS) guidance on the investigation of deaths and organ retention for a number of years and was revised following the implementation of the Human Tissue (Scotland) Act 2006. The guidance not only addressed legal obligations but ethical and emotional considerations.

There was, therefore, concern when it emerged that an organ had been retained without the nearest relatives being informed. The Lord Advocate instructed a national audit to ascertain if there were any other cases where COPFS procedures had not been followed. A review of the procedures and processes relating to organ retention was also undertaken.

The audit identified six cases between 2007 and 2012 where the nearest relatives had not been made aware that an organ had been retained for further examination at the conclusion of a post-mortem examination instructed by the Procurator Fiscal. It also identified a further 10 cases where the nearest relatives had been advised that an organ had been retained but their views on the steps they wished to be taken once such retention was

no longer required had not been obtained. In all of the cases identified, COPFS has made contact with the nearest relatives and sought their views on the burial or cremation of the organs.

Recognising the distress caused if a nearest relative was not informed that an organ had been retained, the Lord Advocate also commissioned the Inspectorate of Prosecution (IPS) to undertake an independent review of COPFS procedures and systems. The purpose of the review was to identify any weaknesses in the systems governing organ retention and make recommendations that would provide assurance that the procedures implemented by COPFS are professional, effective, sensitive and critically that they provide sufficient safeguards to prevent any further instances of nearest relatives not being informed of organ retention following a post-mortem authorised by the Procurator Fiscal.

This report makes a range of recommendations designed to achieve that over-arching aim.

During the review it was evident that there was a commitment from all parties involved in the investigation of deaths, to deliver an effective and coherent system governing organ retention, and to provide the public with confidence that their deceased relative will be dealt with respectfully and that they will always be informed if an organ has to be retained.

To ensure that the system of organ retention is robust and working effectively, IPS will undertake an audit and test the procedures six and 12 months after the publication of this report.



Michelle Macleod
HM Chief Inspector

Executive Summary

The public's attitude to death and the care of the deceased's body after death has evolved, reflecting cultural diversity and an expectation of being involved and consulted in all important decisions regarding their relatives.

To place the extent of organ retention in context, in 2013 there were 5,105 post-mortems authorised by Procurators Fiscal. Of these, 853 were forensic post-mortems¹. There were only three cases where organs were retained representing 0.351% of forensic post-mortems and 0.059% of all post-mortems conducted in 2013.

Key Findings

Greater awareness of cultural sensitivities and medical advances has significantly impacted on the need to retain whole organs and should result in the retention of organs authorised by COPFS occurring only in exceptional cases. The overriding aim is to complete any examination of an organ prior to the deceased's body being released to the nearest relatives. This is evidenced by the low number of organs retained following a post-mortem. In recent years, the highest number of organs retained was five, in 2007.

The systematic failures that led to nearest relatives not being informed that an organ had been retained were two-fold. The first was a failure to adhere to COPFS procedures as a result of an oversight by those dealing with the death in local Procurator Fiscal offices. The second arose due to a lack of clarity, following the creation of specialist homicide teams, on whether it was the responsibility of the team investigating the criminal aspect of the death or those, to whom the death was initially reported, to liaise with the nearest relatives.

Regardless of those failings, what is evident is that there was no internal warning mechanism within the COPFS system or any reconciliation system between COPFS and the pathology service providers that would have alerted those dealing with the death that an organ was still being retained.

While there is an understanding of the professional responsibilities of those dealing with the investigation of deaths, the particular obligations relating to organ retention were not specified in the pathology service providers' contracts or in written protocols between the pathology service providers and COPFS which resulted in a breakdown of communication in the cases identified in the COPFS internal audit.

There is a considerable body of guidance on communicating with bereaved relatives issued by COPFS, emphasising the importance of providing information timeously, sensitively and appropriate to the particular needs of the deceased's relatives. However, there was no procedure or policy to deal with organ retention if the nearest relatives did not want to engage with COPFS on issues such as their preference for the disposal of an organ.

¹ See Part 1, paragraph 1.4

Summary of Recommendations

1. To ensure transparency COPFS should publish annually the number of organs retained after the deceased's body has been released. This information should be included in their publication scheme.
2. There should be an agreed written definition of what constitutes an 'organ' between pathology service providers and COPFS.
3. Attendance on the 'Deaths 2' module and the 'Managing Communication with the Bereaved' course should be mandatory for all staff in the Scottish Fatalities Investigation Unit (SFIU) and other specialist units that deal with fatalities, such as the Health and Safety Division. The training should be completed by legal staff within three months of joining SFIU or other specialist unit.
4. In all cases involving suspected criminality, where an organ is retained following the release of the deceased's body, SFIU should assume responsibility for ensuring that the guidance and procedures relating to the retention of the organ are applied. In particular, SFIU should ensure that the nearest relatives are notified timeously of the retention, informed of likely timescales for the completion of the examination of the organ and their options for its disposal. The views of the nearest relatives on the disposal of the organ should also be obtained.
 - A protocol should be drawn up specifying the procedure to be followed including reference to the specific form(s) to be used and the mechanism of recording the information.
5. Following the release of the deceased's body and the completion of the examination of an organ, all records retained in the SFIU death file should be copied into any associated criminal file.
5. There should be a presumption that the death certificate should be issued when the deceased's body is released by the Procurator Fiscal.
6. COPFS should introduce one national organ retention form to be completed by the pathology service provider and COPFS in any case where an organ is retained after the body is released. The form should contain the following mandatory information:
 - details of the deceased
 - the type of organ retained
 - where it is located
 - how long it is likely to be retained
 - when examination is complete
 - date the body is released
 - the instruction on disposal
7. For reconciliation purposes, a copy of the national organ retention database should be sent each month to a nominated post holder such as the mortuary manager or the administrative manager for each pathology department.
 - The requirement to provide a monthly return, including timescales for returns, should be incorporated into all pathology service providers' contracts.
 - There should be an agreed stage when entries are removed from the national organ retention database. For example, when the wishes of the nearest relative have been provided to the pathologist.

- SFIU National should create and maintain operating instructions for duties relating to the operation of the Organ Retention Database.
8. The existing contracts between COPFS and the pathology service providers should be amended:
- To provide a presumption that the death certificate should be issued when the body is released.
- The contracts should be revised to include:
- A requirement to provide immediate and written notification to COPFS if an organ is retained beyond the deceased's body being released. (It is envisaged that this will be done by submitting the organ retention form.)
 - To provide monthly returns within specified timescales to a nominated contact person/post holder in COPFS specifying details of any organs being held. A physical check should be undertaken each month and reconciled with the information provided by COPFS.
 - To dispose of any organs in accordance with a written instruction provided by the Procurator Fiscal.
9. All communication on the wishes of the nearest relatives should be provided in writing to the pathologist who should acknowledge receipt. The written instruction and the receipt should be retained in the electronic death file.
10. If nearest relatives fail to engage on the disposal of an organ, COPFS should arrange for a second communication, either in person if there is an established rapport, or by recorded delivery of correspondence seeking their instruction. This second communication should advise that COPFS will arrange for the pathologist to dispose of the organ if the nearest relatives fail to engage or provide an instruction on their wishes within a specified period of time. If, after undertaking all reasonable inquiries, COPFS is unable to trace any nearest relatives, the Procurator Fiscal should instruct the pathologist to dispose of the organ.

Part 1: Introduction and Background

Investigation of Deaths by the Procurator Fiscal

1.1 One of the three strategic objectives of COPFS² is to investigate deaths which require further explanation. This includes all sudden, suspicious, unexpected and unexplained deaths and any deaths occurring in circumstances which give rise to serious public concern. In other parts of the United Kingdom, the Coroner³ may investigate such deaths. The primary purpose of the investigation is to ascertain a cause of death although there are a number of other aims of the investigation including:

- to ensure any criminality is discovered and prosecuted
- to allay public anxieties about particular deaths
- to alert family members to any genetic causes of death which may be avoidable
- to maintain accurate death statistics

1.2 COPFS' objectives in the investigation of deaths include:

- securing the confidence of diverse communities
- prioritising the prosecution of serious crime
- providing services that meet the information needs of nearest relatives
- ensuring that all reported deaths are investigated properly in a reasonable time

1.3 Deaths are most commonly reported to the Procurator Fiscal by hospital doctors, General Practitioners (GP) and the police. Once a death has been reported, the Procurator Fiscal has legal responsibility for the deceased's body,

usually until a death certificate is provided by a doctor. If initial investigations do not identify a cause of death, or if a cause of death is believed to be known but there are other concerns surrounding the death, a post-mortem examination (also known as an 'autopsy') may be instructed by the Procurator Fiscal.

1.4 Post-mortems instructed by COPFS fall into two different categories – forensic or non-forensic post-mortems. A non-forensic post-mortem examination is generally performed to confirm the cause of death due to natural causes and where no court proceedings are likely. Forensic post-mortem examinations are carried out where it is suspected that the death is not from natural causes (e.g. accidental, homicidal, suicidal, where there is evidence of violence) and in cases, including death by natural causes and death while under medical care, where a prosecution or Fatal Accident Inquiry (FAI) may be pursued through the courts. The examination may take different forms. The most common types of post-mortems are:

- A non-invasive visual examination by a pathologist taking account of the deceased's medical history and the known circumstances of the death. This is commonly referred to as 'a view and grant'.
- A full post-mortem which examines all parts of the body including internal areas conducted by a single pathologist.
- A full post-mortem conducted by two pathologists. This is often referred to as a 'double doctor' or 'two doctor' post-mortem and is most likely to be conducted in cases where there is suspicion that the cause of death is of a criminal nature and there is a likelihood of criminal proceedings.

² COPFS Strategic Plan 2012-2015

³ See Annex A

- 1.5 If a forensic post-mortem is instructed, it will be performed by two pathologists.
- 1.6 COPFS deals with the investigation of on average 12,000 deaths⁴ every year and over the last five years has on average instructed a post-mortem examination in 49%⁵ of cases reported.
- 1.7 In most cases, the post-mortem examination involves the retention of tissue samples or fluids for laboratory examination and in a few cases it may be necessary for the pathologist to retain a whole organ for more detailed or specialist examination. In a very small percentage of such cases, it may be necessary to retain the organ for further examination after the deceased's body has been released.
- 1.8 It is the procedures and governance arrangements in cases where an organ or organs have been retained for further examination, after the deceased's body has been released, with which this report is concerned. In such cases COPFS will rely upon the pathologist's expertise and professional judgement. The consent of the nearest relative is not required to remove or retain organs or human tissue following a post-mortem examination instructed by the Procurator Fiscal. This differs from NHS hospital instructed post-mortems.

Hospital Post-Mortems

- 1.9 This review only covers post-mortem examinations instructed by the Procurator Fiscal. Other post-mortem examinations, commonly referred to as 'hospital' post-mortem examinations, are not considered in this report. Hospital post-mortems are normally undertaken to provide information on potential genetic disorders in the interests of the nearest relatives. Such post-mortems are regulated by the Human Tissue (Scotland) Act 2006 (The Act). The Act sets out the purposes for which a hospital post-mortem examination may be undertaken⁶ and provides a framework designed to ensure that all such post-mortems and retention of tissues and organs are only carried out with proper authorisation being obtained⁷. Undertaking a post-mortem without proper authorisation can constitute a criminal offence⁸.

Aims and Objectives

- 1.10 The aims and objectives of this inspection were:
 - To review and assess the governance and accountability arrangements regarding the retention of organs.
 - To assess compliance with legal and agreed policies and protocols including arrangements for liaison with nearest relatives.
 - To scrutinise the audit processes to ensure they are sufficiently robust and that the system is fit for purpose.
 - To identify any weaknesses in the systems governing organ retention within COPFS and associated pathology laboratories and make recommendations.

⁴ Source – COPFS Management Information Unit

⁵ Including 'view and grant' (non-invasive visual examination) post-mortems

⁶ Section 23 of the Human Tissue (Scotland) Act 2006

⁷ Section 27 of the Human Tissue (Scotland) Act 2006

⁸ Section 37 of the Human Tissue (Scotland) Act 2006

Methodology

1.11 The review was carried out using a number of accepted techniques including:

- A review of all relevant legislation.
- A review of relevant departmental internal and external protocols and guidance.
- Visits and interviews with all COPFS pathology service providers.
- Interviews of relevant persons involved in the investigation of deaths within COPFS.
- Examination of case papers.
- Visits and interviews with those involved with the provision of pathology services in other jurisdictions including the Forensic Pathology Unit at the Home Office and the State Pathologist in Northern Ireland.

Acknowledgement

1.12 We are grateful to everyone who facilitated our visits and shared their experiences and current procedures regarding the removal, use of and disposal of human tissue and organs.

Part 2: Investigation of Deaths, Post-Mortems and Organ Retention

2.1 We examined the number of deaths reported to COPFS and the number of different types of post-mortem examinations conducted over the past five years. Chart 1⁹ illustrates that the number of death reports received by COPFS has decreased since 2009. In 2009, there were 13,321 reports. This has steadily decreased to 10,226 in 2013. However, the number of invasive post-mortems as a percentage of deaths reported has increased from 44% in 2009 to 59% in 2013. Part of the explanation may be due to the downward trend in the number of ‘view and grant’ examinations from 2009 to 2012 as illustrated in Chart 2.

Chart 1: Death reports received

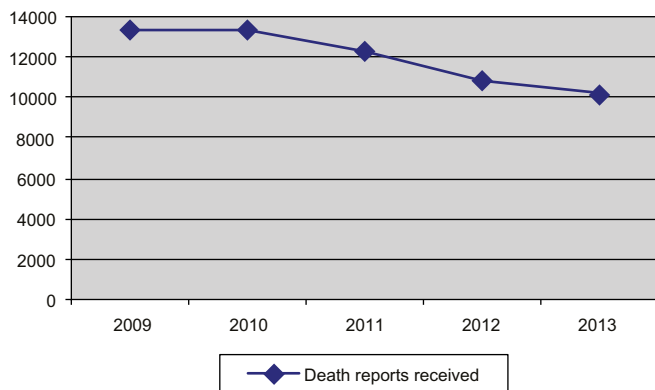
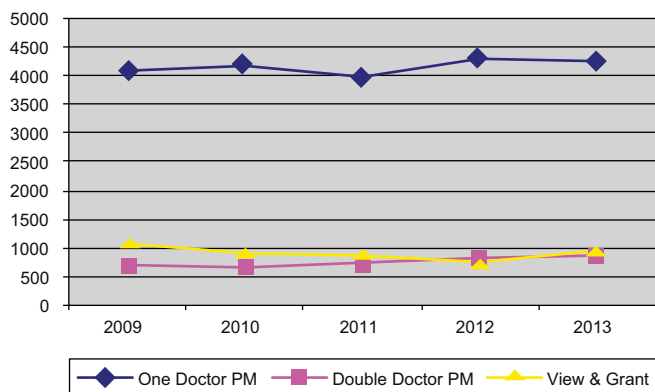


Chart 2: Type of examination



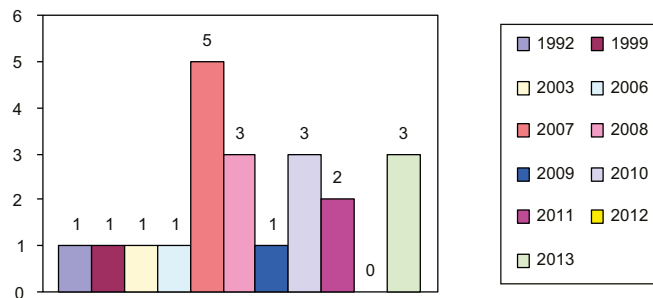
2.2 We also examined data where organs were retained after the body had been released, including the number of cases, type of death, and type of organs retained as shown in Charts 3 to 5¹⁰.

2.3 The data shows that organs have been predominantly retained in two types of death – homicide and Sudden Unexpected Death in Infancy (SUDI)¹¹.

2.4 What is evident from the data is that the number of organs retained following a post-mortem is extremely low. In recent years, the highest number of organs retained was five, in 2007.

2.5 Organs are more usually retained following a double doctor post-mortem with the brain being the most commonly retained, but even in double doctor post-mortems, they are retained in a very small proportion of cases each year (less than 1%) and none were retained in 2012.

Chart 3: Number of cases with organs retained



10 Source – SFIU Organ Retention Database – as at December 2013

11 Also referred to as Sudden Infant Death Syndrome (SIDS)

9 Source – COPFS Management Information Unit

Chart 4: Type of death with organ retained

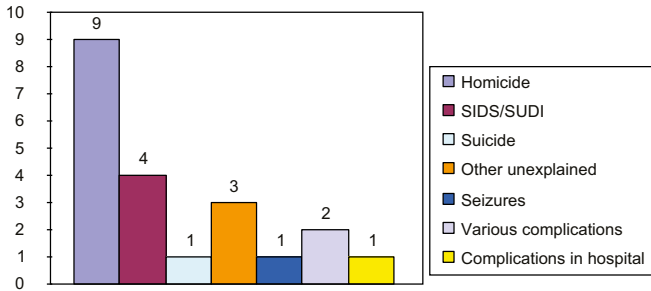


Chart 5: Type of organ retained

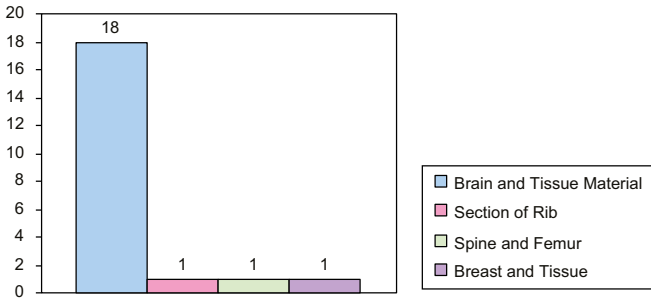
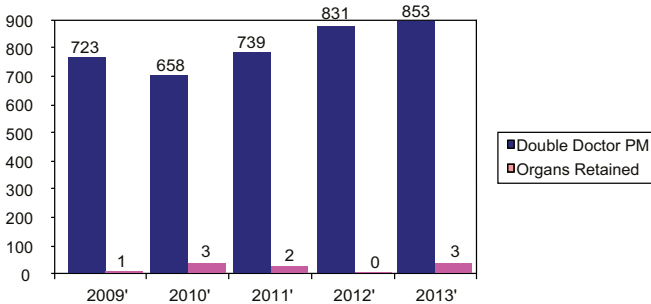


Chart 6: Number of organs retained compared to number of double doctor post-mortems



2.6 To place the extent of organ retention in context, in 2013 there were 5,105 post-mortems authorised by Procurators Fiscal. Of these 853 were forensic post-mortems. There were only three cases where organs were retained representing 0.351% of forensic post-mortems and 0.059% of all post-mortems conducted in 2013.

Recommendation 1

To ensure transparency COPFS should publish annually the number of organs retained after the deceased's body has been released. This information should be included in their publication scheme.

Legal Obligations

2.7 Prior to the Human Tissue (Scotland) Act

2006 coming into force¹², the law on organ retention was vague and unsatisfactory for both medical practitioners and bereaved relatives. Public concern over the practice of organ retention resulted in an Independent Review Group on the Retention of Organs at Post-Mortem being established in 2000, chaired by Professor Sheila McLean, Professor of Law and Ethics in Medicine at Glasgow University. The Review Group published two reports containing a number of recommendations. A key recommendation in the final report was that the Human Tissue Act 1961 should be radically overhauled and replaced by new legislation. This resulted in the enactment of the Human Tissue (Scotland) Act 2006¹³ which remains the primary legislation governing the retention and use of organs following a post-mortem. The Act is supplemented by a number of regulations and orders¹⁴.

12 1 September 2006

13 Full text and explanatory notes available at legislation.gov.uk

14 Human Tissue (S) Act 2006 (Maintenance of Records and Supply of Information Regarding the Removal and Use of Body Parts) Regulations 2006 (SSI 2006 No. 344). This Act relates to records of removal of body parts for transplantation and the use or retention for purposes under s 3(1) of the 2006 Act.

Human Tissue (Removal of Body Parts by an Authorised Person) (Scotland) Regulations 2006 (SSI 2006 No. 327)

Human Organ and Tissue Live Transplants (Scotland) Regulations 2006 (SSI 2006 No.390)

Adults with Incapacity (Removal of Regenerative Tissue for Transplantation) (Form of Certificate) (Scotland) (No.2) Regulations 2006 (SSI 2006 No. 368)

Approval of Research on Organs No longer Required for PF Purposes (Specified Persons) (Scotland) Order 2006 (SSI 2006 No. 310)

Anatomy (Specified Persons and Museums for Public Display) (Scotland) Order 2006

Anatomy (Scotland) Regulations 2006 (SSI 2006 No. 334)

Human Tissue (Scotland) Act 2006 (Anatomy Act 1984 Transitional Provisions) Order 2006 (SSI 2006 No. 340)

- 2.8 The Act deals with three distinct uses of human tissue: donation for transplantation, research, education or training and audit; the removal, retention and use following post-mortem examination; and for the purposes of the Anatomy Act 1984. The Act, recognising the importance for diagnostic and other purposes of retaining organs and tissue in post-mortems instructed by the Procurator Fiscal, did not alter COPFS practices in instructing post-mortems.
- 2.9 The Act introduced the concept of authorisation for using tissue and organs no longer required for the purposes of the functions, or under the authority, of the Procurator Fiscal.
- 2.10 The Act provides that on receipt of notification¹⁵ from the Procurator Fiscal that a tissue sample is no longer required for the purposes of the functions of the Procurator Fiscal, it falls to be retained as part of the medical records of the deceased person¹⁶. As such, nearest relatives will not routinely be asked about their preferences for disposal of tissue. Tissue samples can be used for the purposes of education, training or research, but only if specific authorisation from the nearest relatives has been obtained¹⁷.
- 2.11 Similarly, an organ no longer required for the purposes of the functions, or under the authority, of the Procurator Fiscal cannot be used for any other purpose, including research, without authorisation from the nearest relatives¹⁸.

2.12 The Act further provides that tissue samples and organs acquired from a

Procurator Fiscal post-mortem prior to 1 September 2006 could continue to be used for the purposes of education, training and research without the need to obtain authorisation¹⁹.

Definition of an Organ

- 2.13 The Act clarifies that ‘tissue’ includes skin, a cornea and bone marrow and that ‘tissue sample’ includes any derivative of skin²⁰ (which appears to include hair and nails) but it does not provide a definition of what constitutes an organ. To obtain some clarification, we referred to guidance and relevant documentation issued by other medical bodies²¹.
- 2.14 Taking account of the guidance, there is no dubiety that organs include any significant part of the body, including the brain, lungs and heart. There is less clarity, however, regarding the retention of limbs and parts of limbs.
- 2.15 The distinction in the Act between tissue and organs is perhaps reflective of the different emotional significance that they can have for nearest relatives. Applying that reasoning, we are of the view that significant parts of bones or limbs, not retained in paraffin blocks, would have similar emotional significance to organs for nearest relatives and given that retention of such parts is extremely rare, the best approach is to include limbs and parts of limbs within the definition of an organ. Whether bones and parts of limbs are included within any definition, there should be an agreed written understanding between COPFS and the pathology service providers on what constitutes an ‘organ’ requiring to be notified to the nearest relatives.

¹⁵ The notification requirements are set out in the Human Tissue (Specification of Posts) (Scotland) Order 2006 (SSI 2006 No. 309)

¹⁶ Section 38(2) of the Human Tissue (Scotland) Act 2006

¹⁷ Section 39(b) of the Human Tissue (Scotland) Act 2006

¹⁸ Section 40(2)(b) of the Human Tissue (Scotland) Act 2006

¹⁹ Sections 47 and 48 of the Human Tissue (Scotland) Act 2006

²⁰ Section 60 of the Human Tissue (Scotland) Act 2006

²¹ See Annex B

Recommendation 2

There should be an agreed written definition of what constitutes an 'organ' between pathology service providers and COPFS.

Retention of an Organ or Organs

- 2.16 In this report, all references to organ retention refer to the retention of an organ after the deceased's body has been released on the authority of the Procurator Fiscal. In other words, the deceased's body released for burial or cremation is not intact.
- 2.17 This should be distinguished from what has been described as 'temporary or short-term removal'. There are some cases where, as part of the post-mortem examination, it is necessary for the pathologist to remove an organ from the body for a more detailed examination or specialist examination by another pathologist. In most cases the organ will be reunited within the body prior to the body being released to the nearest relative.
- 2.18 In certain circumstances, it may be necessary to retain both the body and organ for a longer period of time. The most common scenario is where there is suspected criminality and there may be a requirement for a defence post-mortem. Another possibility is where the nearest relative has requested that an organ is examined by a specialist, perhaps to establish if there are any genetic implications for other members of the family. The removal of the organ for examination in these circumstances has been described and recorded as 'temporary or short-term removal or retention'.
- 2.19 The use of such terminology is in our view unhelpful and can result in confusion. The removal of the organ for the purpose of further examination to assist in determining the cause of death is a necessary part of the pathologist's examination. The pathologist records the examination undertaken in every post-mortem and produces a post-mortem report. Any specialist examination should either be referred to in the post-mortem report or in a supplementary report detailing the nature and findings of the examination.
- 2.20 It is very much the exception for an organ to be transported to a laboratory or mortuary other than where the post-mortem is held. If, however, it is required, all of the pathology service providers have outlined their transportation and audit arrangements and confirmed that in all such cases the location of any organ at any point will be tracked and recorded on their system.
- 2.21 If the further examination is likely to take more than a few days, the reason for the delay should be explained to the nearest relatives but if the organ is not retained separately from the deceased's body, it should not be categorised as a case in which an organ has been retained.
- 2.22 If, however, the nearest relatives express a preference for the body to be released without the organ being reunited with the body, perhaps for religious or cultural reasons, then the retention of the organ should be classified as organ retention and all the authorisation, notification and recording procedures completed.

Forensic Pathology

- 2.23 A significant finding of this review is the consensus among the pathology service providers that organ retention is now only likely to occur exceptionally. The overriding aim is to complete any examination of an organ prior to the deceased's body being released to the nearest relatives.
- 2.24 There are two factors underpinning the significant reduction in organs being retained. The first is cultural. Following heightened public concern over the retention of organs at Alder Hey Children's Hospital in Liverpool and the subsequent Inquiry, the distress caused to nearest relatives by retaining organs was plainly evident. As a consequence, the medical profession will only seek to retain an organ where it is necessary either to provide a direct benefit for the nearest relatives, for example to ascertain if there is any genetic disorder, or for the wider public interest, the most common situation being where there is a suspected homicide.
- 2.25 The second and more significant factor is advances in forensic pathology. Traditionally the main organs retained were lungs, hearts and brains. Lungs were retained to investigate whether the death was industrially related. However, samples from the lung are now sufficient for diagnostic purposes of this nature.
- 2.26 More recently, the two main groups of organs that have been retained are brains, particularly in relation to blunt force potential homicide and Sudden Unexpected Death in Infancy (SUDI) cases, and hearts, predominantly in relation to sudden cardiac deaths of children and young adults. The purpose of retaining hearts for cardiological screening is to investigate whether there are any genetic issues and to provide the nearest relatives with as much information as possible. Again, due to advances in forensic pathology, guidelines on Autopsy Practice issued by the Royal College of Pathology, including guidance on deaths with likely cardiac pathology, now emphasise and advocate retaining samples rather than retaining the whole heart for specialist examination²².
- 2.27 The most commonly retained organ is the brain for neuropathology examination. The main reason for retaining the brain was that it required a prolonged period of 'fixation'²³ of usually four to six weeks prior to examination. However, medical developments have significantly reduced the time required for 'fixation' and for deaths where there is suspected criminality, the examination of the brain can now be undertaken within a considerably shorter time frame and in almost all cases within a three-week period. Given that there is likely to be a defence post-mortem in such cases, the examination can now be completed and the brain reunited with the body prior to it being released.
- 2.28 In non-criminal cases where the examination is to assist with establishing the cause of death, forensic pathologists and neuropathologists have worked together and developed excellent communication channels which have enabled samples to be taken for histological and other specialist examination within 24 hours of the brain being retained in 'fixative'²⁴. Accordingly, there is no need to retain the brain in such cases.

²² The UK Cardiac Pathology Network, who are affiliated to the Association for the European Cardiovascular Pathology has also developed autopsy sampling guidance

²³ The process of preserving the brain is called 'fixation'

²⁴ A chemical solution such as formalin is used to fix the brain

2.29 Greater awareness of cultural sensitivities and medical advances has significantly reduced the need in most cases to retain a whole organ following the release of the deceased's body and should result in the retention of organs authorised by COPFS occurring only in exceptional cases.

COPFS Guidance

2.30 Following the commencement of the 2006 Act, COPFS issued a circular²⁵ to all staff. The circular summarised the main provisions of the Act, reminded staff of existing guidance and practices and reinforced procedures to be undertaken if an organ is retained following the deceased's body being released for cremation or burial.

2.31 This supplemented a circular²⁶ issued in 2002 which provided specific guidance on communicating with bereaved relatives in deaths reported to the Procurator Fiscal and a summary of information relating to the retention of organs and tissue blocks with the options for their disposal.

2.32 In addition to the circulars, there is an abundance of COPFS guidance outlining appropriate procedures and best practice on dealing with nearest relatives when a death is reported to the Procurator Fiscal and detailed and specific guidance if a post-mortem is required and an organ has to be retained. The guidance has been regularly reviewed and updated and is available to staff on the COPFS Knowledge Bank²⁷.

2.33 Specifically, the Book of Regulations²⁸ provides detailed information on various aspects of the investigation of deaths including organ retention. It states:

“Procurators Fiscal have a right and a duty to control the disposal of the body of any person who has died within Scottish jurisdiction while they make enquiries into the death. Where there is a requirement to retain an organ for further enquiry the nearest relative must be informed and arrangements must be made to provide for the disposal of the organ in accordance with the nearest relative's wishes.”

“It is the duty of the Procurator Fiscal to provide services which meet the information needs of nearest relatives.”

2.34 A 'Deaths Manual of Practice' provides additional legal and practical guidance on procedures to be adopted if it is necessary to retain an organ. It provides that:

- Arrangements should be put in place with local pathology service providers to ensure that the Procurator Fiscal is notified promptly in all cases where an organ is retained in the course of a post-mortem and where tissue blocks/slides are made. The Procurator Fiscal should be informed of the reason for the retention and an estimate of how long an organ will require to be retained.
- Liaison arrangements between the Procurator Fiscal and pathology service providers must be put in place to ensure that the Procurator Fiscal is notified, in writing, as soon as the analysis of any retained material has been completed.
- Thereafter, the Procurator Fiscal should confirm to the pathologist that the material is no longer required for the purposes of the investigation and

²⁵ Crown Office Circular No. 15 of 2006

²⁶ Crown Office Circular No. 3 of 2002

²⁷ An internal information database containing legal and non-legal policy and guidance

²⁸ An internal guidance manual

authorise its release or continued retention, as appropriate, again in writing.

- In the case of organs, disposal should be in accordance with any reasonable wishes of the nearest relative.

Scottish Fatalities Investigation Unit (SFIU)

2.35 There has been a progressive move towards greater specialisation in the investigation of deaths in COPFS since 2010. Historically, such investigations were undertaken in every Procurator Fiscal office across Scotland under the direction of the local District Fiscal.

2.36 In 2010, the SFIU was launched. It is the national specialist unit responsible for investigating all sudden, suspicious, accidental and unexplained deaths. When launched, in its initial form in 2010, it assumed responsibility for policy at a national level with the investigation of deaths still managed at local level under the direction of SFIU.

2.37 In April 2012, as part of the restructuring²⁹ of COPFS, SFIU assumed national responsibility for all matters related to deaths and post-mortems, including the initial investigation which previously would have been the responsibility of the local Procurator Fiscal. Within the new structure there are dedicated and knowledgeable staff situated in three geographic COPFS Federations – SFIU North, SFIU East and SFIU West.

2.38 SFIU deals with all non-suspicious deaths from the death being reported to COPFS to the point of closure. Their role is to investigate and prepare all death reports to the highest possible standard, to apply policy and practice consistently and to ensure that appropriate and timely

decisions are taken in every case.

Throughout their investigation SFIU will liaise with bereaved relatives to keep them fully informed of progress.

2.39 SFIU also delivers training on the role of the Procurator Fiscal in the investigation of deaths to various external stakeholders including the Police, Scottish Ambulance Service and newly qualified doctors.

2.40 To raise awareness of the role of COPFS in the investigation of deaths and to provide greater understanding of the duty of the Procurator Fiscal and, in particular, its interaction with those with 'protected characteristics' as defined in the Equality Act 2010³⁰, the COPFS National Federation Equality Network held a conference in October 2013 on 'Communicating with the Procurator Fiscal in the Investigation of Sudden Deaths' for staff and external participants, including community groups. A session delivered by the Head of SFIU addressed organ and tissue retention. The conference received favourable feedback and the intention is to hold such conferences bi-annually.

2.41 There has been positive feedback from a number of stakeholders on the creation of specialist units to deal with deaths reported to the Procurator Fiscal. They report that there has been an improvement overall in the service they have received and, in particular, highlighted the advantages of having a dedicated point of contact.

²⁹ COPFS restructured into four Federations, each led by a Procurator Fiscal – See Annex E

³⁰ Age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation and marriage and civil partnership in relation to employment issues

Training

2.42 It is important that all staff dealing with the investigation of deaths and organ retention are fully familiar with the relevant guidance and approved practices.

2.43 There are a number of training modules provided by COPFS which contain guidance on organ retention. These include:

- 'Deaths 2'
- 'Retention of Organs and Samples Power Hour'
- 'Managing Communication with the Bereaved'
- 'On Call Homicide and On Call General'³¹

2.44 The main training module referring to organ retention is the 'Deaths 2' module. It covers all areas including:

- When retaining organs may be necessary
- Liaison with the Pathologist
- How long organs are likely to be kept
- Authorising release of organs
- Liaison with nearest relatives
- Disposal options
- Paediatric post-mortems
- Human Tissue (Scotland) Act 2006
- Transplantation
- Consideration of public interest and preservation of evidence
- Consideration of cultural and religious needs

2.45 The 'Retention of Organs and Samples Power Hour' PowerPoint is compiled from relevant sections of the 'Deaths 2' module and was designed to be delivered at local offices. It provides an overview of issues relating to organ retention and is in a format to enable it to be delivered easily to all legal staff that provide on call cover and work in homicide units within the Federations.

2.46 With the exception of 'Managing Communication with the Bereaved', which is delivered by CRUSE Bereavement Care, training is delivered by experienced COPFS legal trainers, using real-life examples to provide a greater understanding of the issues that can arise.

2.47 Under the existing contracts between COPFS and the pathology service providers, there is a provision for pathologists to provide training to COPFS staff but this does not occur on a regular basis.

Good Practice

There should be a pathology input into training provided to SFIU.

2.48 The 'Deaths 2' module commenced in May 2009 and is designed for legal and precognition staff actively involved in, or who within the near future anticipate being involved in, the further investigation of deaths up to and including the preparation and conduct of Fatal Accident Inquiries. The course has received favourable feedback from those who have attended.

2.49 The 'Managing Communication with the Bereaved' course aims to assist staff to respond appropriately to family members' reaction to loss. Feedback from the evaluation of the course has indicated that a counselling element to the training would be helpful to enable staff to provide better support to nearest relatives at difficult meetings³².

2.50 Attendance on the courses is not mandatory but agreed by individual members of staff with their line managers.

³¹ Awaiting approval at the time of the inspection

³² Currently under consideration

2.51 Table 1 provides a breakdown of SFIU staff attendance on the two main courses up to April 2014.

Table 1: Attendance at training courses

	Deaths 2	Managing Communication with the Bereaved	Staff in SFIU
Legal	11	6	25
Precognition	2	0	2
Administrative (including VIA ³³)	3	13	25
Total	16	19	52

2.52 As shown, only 44% of the SFIU legal staff have attended the 'Deaths 2' course and 37% of all SFIU staff have attended the 'Managing Communication with the Bereaved' course.

2.53 Given the specialist nature of the investigation of deaths, it is essential that all members of SFIU and other specialist units that deal with fatalities, such as the Health and Safety Division, are fully informed and equipped to deal with such work and that those involved in the investigation of homicides should have an awareness of the main issues.

Recommendation 3

Attendance on the 'Deaths 2' module and the 'Managing Communication with the Bereaved' course should be mandatory for all staff in the Scottish Fatalities Investigation Unit (SFIU) and other specialist units that deal with fatalities, such as the Health and Safety Division. The training should be completed by legal staff within three months of joining SFIU or other specialist unit.

Good Practice

Completion of the 'Retention of Organs and Samples Power Hour' should be included as a specific personal development objective within performance agreements for all legal staff who deliver on-call services and work in homicide teams.

³³ Victim Information and Advice staff

Part 3: Case Review

3.1 To provide public reassurance that the nearest relatives are always made aware when an organ has been retained, that they are provided with the reasons for the retention and consulted on their wishes once retention is no longer required, it is essential to analyse why the system failed in the six cases identified in the COPFS audit where it is acknowledged that COPFS procedures were not followed. The cases identified spanned from 2007 to 2012 and all pre-dated SFIU assuming national responsibility for the investigation of deaths.

3.2 In addition to these cases, the audit conducted by COPFS identified 10 cases where the nearest relatives had been informed that an organ had been retained but their wishes on how the organ should be disposed of on completion of the examination had not been obtained. This raises a separate issue regarding the nature of the engagement with nearest relatives which is discussed in Part 6.

Analysis of Cases where Nearest Relatives were Not Notified

3.3 In three of the cases identified in the audit, the deceased's brain was retained to assist with the investigation into the cause of death. The investigation was carried out under the direction of the local Procurator Fiscal. From a review of COPFS files, the Fiscal had liaised with the nearest relatives to explain the reason for instructing a post-mortem. However, on receiving the cause of death and authorising the release of the deceased's body, the nearest relatives were not advised that the brain had been retained. In the absence of any instruction from the Procurator Fiscal on the disposal of the organ, it was retained by the pathology department.

3.4 The failure to follow COPFS guidance to notify the nearest relatives was as a result of an oversight by those dealing with the death in the local Procurator Fiscal office. While COPFS guidance and procedures were not followed, what is also evident is that there was no internal warning mechanism within the COPFS system or any reconciliation system between COPFS and the pathology service providers that would have alerted those dealing with the death that an organ was still being retained. The deficiencies in the system and proposed remedies are examined in detail in Part 4.

3.5 In the other three cases, the circumstances of the deaths resulted in criminal proceedings and ultimately a conviction for murder. In each case, as part of the investigation, the brain had been retained for a specialist neuropathology examination.

3.6 Each death was reported to the local Procurator Fiscal and when it became apparent that the circumstances of the deaths were suspicious, the criminal investigations were directed by a specialist homicide or high court team. This resulted in the retention of the brain being recorded in the files relating to the initial death report but not in the criminal files. The subsequent release of the bodies of the deceased and liaison with nearest relatives was handled by those dealing with the criminal cases who were unaware that the brain had been retained and as a result, the nearest relatives were not informed that the brain had been retained when each deceased's body was released.

3.7 The difficulty that arose was due to a lack of clarity between those dealing with the initial death reports and those directing the criminal investigations as to who was responsible for notifying the nearest relatives that an organ had been retained. Regrettably, those dealing with the initial death reports erroneously assumed that the homicide or high court teams would advise the nearest relatives that an organ had been retained.

3.8 The need for clear lines of accountability for notifying nearest relatives that an organ has been retained was one of the main issues identified in a report, following an audit in 2010 in England and Wales and Northern Ireland of organs found to be held by various police forces. The report concluded that there had been a lack of clarity between police investigators and the medical profession on who was responsible for liaising with nearest relatives regarding the disposal of organs at the completion of a criminal inquiry. The proposed solution was to agree national protocols outlining lines of responsibility and audit procedures³⁴.

3.9 To assist in determining where the responsibility for notifying the nearest relatives of organ retention should sit within COPFS, it is helpful to examine the role of each team and the interaction between them.

Suspicious Deaths

3.10 The move to greater specialisation in the investigation of deaths has been mirrored in the investigation of serious crime. In each Federation there are specialist teams investigating any death where there is suspected criminality, including homicides, road traffic fatalities and deaths caused through the unlawful supply of illegal drugs. Fatalities arising from potential breaches of health and

safety legislation are investigated by a national Health and Safety Division.

3.11 Given the difficulties that arose where there was suspected criminality, we reviewed the practices and any relevant protocols and guidance in each of the Federations on who was responsible for dealing with organ retention in such cases.

Federation Protocols and Practices

3.12 In the East Federation there were written protocols for dealing with deaths where there was potential criminality. The protocols provided that, other than cases where homicide was suspected, SFIU East would assume responsibility for dealing with the initial instruction to the pathologist, releasing the body and all issues arising from any retention of organs. This included all deaths arising from road traffic fatalities or deaths caused by the unlawful supply of drugs, regardless of whether there was likely to be criminal proceedings.

3.13 There were no written protocols dealing with deaths where there was potential criminality in the North and West Federations but in practice they followed the approach taken by the East Federation and, other than cases where homicide was suspected, SFIU West and North assumed responsibility for dealing with all aspects of the death.

3.14 The reasoning for SFIU assuming primacy in such cases is that there are usually some preliminary police inquiries required to establish if the death resulted from criminal actions. A preliminary report including the outcome of these inquiries is sent from SFIU to Crown Counsel³⁵ seeking an instruction. If it is decided that there is sufficient evidence to merit criminal proceedings, the case will pass to the homicide or high court

³⁴ See Annex A

³⁵ The Law Officers and Advocates Deputes

team. Until that decision, the case is retained by SFIU who will continue to deal with any issues relating to the death including any discussion regarding the retention of organs.

Homicides

3.15 In the East Federation, if there was a suspected homicide, the protocol specified that the homicide team should instruct the pathologist and discuss any issues arising from organ retention. The homicide team also communicated with nearest relatives if an organ was retained. Both SFIU East and the homicide team had clear audit trails to record cases where organs were retained.

3.16 In accordance with revised guidance issued by COPFS³⁶, notification of any organs retained was submitted by SFIU East to SFIU National who now maintain a national organ retention database³⁷.

3.17 In the West Federation, SFIU West and the homicide team took the lead in different areas. A legal member of the homicide team or an on-call depute always attended the post-mortem and would be involved in any discussion regarding the retention of organs. A record of any organ retained was sent by the pathologist to SFIU West and they notified SFIU National.

3.18 The homicide team on receipt of instructions from Crown Counsel would notify SFIU West that the body could be released and SFIU West dealt with the administrative requirements. In general, if there was an organ retained, communication with the nearest relatives was often undertaken by a police liaison officer appointed to the family.

3.19 The geographical area covered in the North introduces additional complications. The area is covered by three different mortuaries and there are SFIU staff based in Inverness, Aberdeen and Dundee. In the North Federation, homicides are dealt with by high court teams based in Aberdeen and Dundee. There are local variations on the interaction of the high court teams and SFIU North. In one area, the high court team takes the lead in dealing with all aspects of the death including organ retention whereas in another area, a depute from the high court team would discuss retention of organs with the pathologist at the post-mortem but SFIU North would organise the release of the body and arrange for nearest relatives to be notified of the retention. In one Northern jurisdiction, if an organ is retained, the pathologist preferred to speak with the family directly.

3.20 Thus the only type of death where there was potential for SFIU and operational teams in the Federations to both be involved was where there was a suspected homicide.

Revised Guidance

3.21 Following their audit, COPFS implemented an urgent review of its processes, introduced a number of new measures and issued revised guidance.

3.22 In February 2014, guidance was issued by COPFS advising that for homicide cases, it is the responsibility of the team dealing with the homicide to authorise the retention of an organ, communicate to nearest relatives that an organ has been retained and to seek their wishes for return/disposal of the organ. The guidance states:

“Each time an organ is retained members of the homicide team are to pass information in relation to the retained

³⁶ 30 January 2014

³⁷ See Part 4

organ to SFIU National who will maintain a record of retention and reconcile that with information held by mortuaries/pathologists on a regular basis.”

- 3.23 The rationale given by COPFS for placing responsibility on homicide or high court teams is that members of the homicide team will have met with the nearest relatives of the deceased and have a relationship with them.
- 3.24 We agree that clear lines of responsibility are essential to avoid the difficulties that have occurred but, for a number of reasons, we are of the view that SFIU is best placed to deal with all issues flowing from the death including organ retention.

Role of SFIU and Homicide or High Court Teams

- 3.25 The pathology service providers were extremely supportive of the establishment of SFIU and the Federation Fatalities Units. Their assessment was that SFIU had introduced greater clarity and certainty on whom to contact to discuss cases. Many expressed a preference for having a single point of contact for all cases rather than introduce a different procedure solely for homicides, particularly given the low number of such cases.
- 3.26 Further, as they deal with SFIU on a daily basis and are familiar with their administrative arrangements, their preference was to retain SFIU as the single point of contact to send documentation, such as death certificates, in all cases.
- 3.27 During the review, a number of staff in homicide teams indicated that they were not familiar with the relevant administrative processes relating to deaths and expressed a preference for SFIU to manage the procedures and requirements that flow from the death as opposed to the criminal investigation.

Even in the East, where the homicide team assumed responsibility for dealing with all issues arising from the death, SFIU East assists by obtaining the death certificate and dealing with administrative requirements. In practice, while the homicide team has overall responsibility for liaising with the nearest relatives, SFIU East is fully appraised by the homicide team and they work in partnership.

- 3.28 The main type of organ retained in homicides is the brain. Given the reduction in time to conduct a neuropathology examination and allowing that a defence post-mortem will normally be required, in most cases the organ will be reunited with the deceased’s body prior to being released. It will only be the exceptional case where an organ is retained after the deceased’s body is released which means that homicide teams will deal with such matters very infrequently, unlike SFIU.
- 3.29 We agree that it is best practice for those dealing with the criminal investigation to meet with the nearest relatives of the deceased. It provides the nearest relatives with a point of contact throughout the criminal proceedings and a forum to obtain information on the legal process and to discuss any particular issues causing concern. However, while having a single point of contact for the nearest relatives is attractive, there are practical difficulties with homicide teams being the sole contact point.
- 3.30 To comprehend the difficulty that arose in the cases identified in the audit, police reporting procedures are of significance. For all deaths reported to the Procurator Fiscal, the police submit a sudden death report to the relevant Fatalities Unit. This report provides the circumstances of the death, known medical history and any other relevant information to allow SFIU to determine the type of investigation required.

- 3.31 If the death is suspicious, the police will submit another report – a standard prosecution report (SPR). A SPR will be submitted once an accused person has been identified and there is evidence that their actions are responsible for the death of the deceased person.
- 3.32 The timing of the submission of both reports is relevant. The sudden death report will be submitted, in most cases, the first working day following the death whereas the timing for the submission of the SPR is dependent on the stage of the criminal investigation. While the identification of an accused person may be straightforward, enabling a report to be submitted within a short timescale following the death, there are some cases where it may take some time to identify an accused person or to determine if the death was the result of criminality, and a report may not be submitted until a few days or weeks following the death. In such cases, there is unlikely to be early contact by the homicide team with nearest relatives.
- 3.33 Further, post-mortems in suspicious deaths are given priority so it is likely that any decision to retain an organ will be taken before the homicide team receives a report from the police. This inevitably results in SFIU, in liaison with the homicide team, instructing the post-mortem and contacting nearest relatives to advise that there is to be a post-mortem. It, therefore, makes sense for the notification of organ retention to be transmitted to SFIU and retained as part of the SFIU file.
- 3.34 The current guidance does not address who is to take responsibility for authorising the release of the body or dealing with organ retention in such cases and there remains the possibility of uncertainty and confusion on who is accountable in such circumstances.
- 3.35 For the reasons outlined, our preference is for SFIU to assume responsibility for all cases where organs are retained including suspected homicides. Such an approach will remove any uncertainty that may arise if there is a delay in the submission of a SPR or any dubiety as to whether the circumstances of the death are suspicious.
- 3.36 For completeness, SFIU being held accountable for ensuring that all procedures are followed and collating and administering the forms to provide the necessary audit trails, should not prevent homicide teams being involved or liaising with the nearest relatives regarding the post-mortem and organ retention if that is deemed preferable or appropriate.

Recommendation 4

In all cases involving suspected criminality, where an organ is retained following the release of the deceased's body, SFIU should assume responsibility for ensuring that the guidance and procedures relating to the retention of the organ are applied. In particular, SFIU should ensure that the nearest relatives are notified timeously of the retention, informed of likely timescales for the completion of the examination of the organ and their options for its disposal. The views of the nearest relatives on the disposal of the organ should also be obtained.

- A protocol should be drawn up specifying the procedure to be followed including reference to the specific form(s) to be used and the mechanism of recording the information.
- Following the release of the deceased's body and the completion of the examination of an organ, all records retained in the SFIU death file should be copied into any associated criminal file.

Part 4: Processes and Procedures

Authorisation

4.1 In all cases, the pathologist requires authorisation from COPFS prior to performing a post-mortem. The instructing Procurator Fiscal will advise on any particular requirements such as toxicology. On completion of the post-mortem, the pathologist will provide the cause of death, or where it is not established, discuss further lines of investigation with SFIU.

Medical Certificate

4.2 The pathologist in every case will issue a medical certificate of the cause of death (commonly known as the death certificate)³⁸. The death certificate is a prescribed form providing the cause of death and it enables the Registrar to issue a certificate of registration of the death which then allows burial or cremation. The death certificate will normally be issued following the completion of the post-mortem. In some cases, the cause of death may initially be recorded as unascertained until further investigation such as toxicology is carried out. The certificate can be amended following the results of the further investigation.

Release of the Deceased's Body

4.3 On receipt of the medical certificate of the cause of death, the Procurator Fiscal will in most cases authorise the release of the body for burial or cremation. The authorisation by the Procurator Fiscal to release the body denotes that their investigation is complete and can be taken as notification that tissue samples are no longer required and fall to be retained as part of the medical record of the deceased.

4.4 At present the pathology service providers' contracts provide that the pathologist should issue the death certificate on the same day as the post-mortem. However, if the pathologist requires to undertake any further examination, the body will not be released when the certificate is issued.

4.5 In some jurisdictions, however, the pathologist's practice is to issue the death certificate only when the deceased's body is released. This practice has the attraction of both elements of the process being dealt with as a single step and ensures that the examination of the deceased is complete when the death certificate is issued. This should not incur any additional delay in organising a funeral as the critical information to enable arrangements to be finalised is when the body is likely to be released by the Procurator Fiscal.

Recommendation 5

There should be a presumption that the death certificate should be issued when the deceased's body is released by the Procurator Fiscal.

Organ Retention Database

4.6 One obvious defect in the previous arrangements was a lack of any reconciliation process between COPFS and the pathology service providers. If there had been such a process, it would have highlighted that there were organs being held at mortuaries and other establishments where the examination had been completed but the pathologist had not received any notification of the wishes of the nearest relatives for disposal. In addition, there was no internal COPFS reconciliation process. If a centralised record of cases where organs were retained had been held by another part of the organisation, for example at an Area level, then the

³⁸ Section 24(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965

oversight in the cases referred to previously would have been identified.

- 4.7 To remedy this deficiency, one of the most significant measures introduced by COPFS following their audit was the establishment of a National Organ Retention Database. The database is held on an Excel spreadsheet and is retained and updated by SFIU National.
- 4.8 In any case where an organ is retained subsequent to the deceased's body being released, it is incumbent on the SFIU team in each Federation to notify SFIU National to add it to the database. Once it is recorded on the database SFIU National monitors the retention of the organ.
- 4.9 The new database records the date of post-mortem, who performed it, the type of organ retained, the reason for retention, details of the nearest relative and associated communication, the date that the examination of the organ is complete and can be released to the nearest relatives for burial or cremation or disposal by the pathologist. It also provides a field for any additional information such as the wishes of nearest relatives regarding the disposal of organs³⁹.
- 4.10 As at June 2014, there were 6 cases recorded on the organ retention database. In three cases, the investigation into the cause of death is concluded and COPFS is in contact with the nearest relatives to obtain their wishes on the burial or

cremation of the organs. In the other three cases, there is an ongoing investigation or court proceedings.

Organ Retention Notification

- 4.11 Central to the operation of the national organ database is the notification procedure. In any case where an organ is retained, there must be written notification from the pathologist to the Procurator Fiscal and written acknowledgement by the Procurator Fiscal. When notification that an organ has been retained is received from a pathologist, it should be sent to a nominated person at SFIU National responsible for updating the Organ Retention Database.

Recording Procedures

- 4.12 With the exception of the death certificate form, we found that recording mechanisms for authorising post-mortems, releasing the body and notification of any organs retained varied not just between the three Federations but even within Federations. The differences are primarily due to the diverse documentation and processes used by different pathology service providers. In addition, a range of different forms and means of communication has evolved between pathology departments and those dealing with death investigation in COPFS, with most deriving from the pre-Federation structure.
- 4.13 In most jurisdictions notification of organs, retained after the deceased's body has been released, will be recorded on a specific organ retention form – although the forms differ as to the type of information recorded – and they are communicated in a number of different ways – faxed, emailed or sent through the postal system to SFIU.

³⁹ As part of the review, consideration was given to extending the existing COPFS case management system to input data relating to organ retention or to introduce a bespoke system to record organ retention. However, IT constraints prohibited extending the existing case management system and given the low number of organs retained, the cost of introducing a bespoke system would be disproportionate

- 4.14 COPFS, recognising the inconsistency of practices and formats being used to record the retention of organs, entered into discussion with the pathology service providers to introduce two standardised 'Body Release' forms for use throughout Scotland – one form for cases where organs have been retained and another where no organs have been retained.
- 4.15 The proposed form to be completed when an organ or organs have been retained contains details of the type of organ retained, where it is stored, when it is likely to be released and a section for the Procurator Fiscal to authorise the release of the body. It does not provide for details of when the examination of the organ is concluded or authorisation regarding disposal of the organ. Some of the current forms in use do provide this information and also record all communication between the Procurator Fiscal, pathologist and the mortuary.
- 4.16 One disadvantage with the proposal to introduce two forms is that it will result in forms being submitted for every post-mortem (approximately 5,000 a year). There was concern expressed by some pathology service providers that such a proposal may result in the critical form, that is the form advising that an organ has been retained after the deceased's body has been released, being overlooked and not readily identifiable.
- 4.17 The overriding purpose of any system monitoring the retention of organs is that it must be able to easily identify the exceptional cases where an organ has been retained. In considering how to achieve that aim, there has to be an agreed understanding of the professional responsibilities of the pathology service providers and COPFS.
- Responsibilities of Pathology Service Providers and COPFS**
- 4.18 If the pathologist is of the opinion that it is necessary to retain an organ after the deceased's body has been released, the pathologist must inform the Procurator Fiscal and obtain authorisation.
- 4.19 Thereafter, it is the responsibility of the Procurator Fiscal to inform the nearest relatives, to obtain their wishes regarding the disposal of the organ at the completion of the examination and to communicate their wishes to the pathologist.
- 4.20 It then falls to the pathologist to dispose of the organ in accordance with the written instruction from the Procurator Fiscal.
- 4.21 The pathology service providers and those dealing with deaths in COPFS acknowledged and agreed with the above description of their respective responsibilities.
- 4.22 Proceeding on that agreed understanding and given the extremely low number of organs that will be retained after the deceased's body has been released, in comparison to the number of cases where a post-mortem is instructed, we advocate the implementation of a single organ retention form to be completed in those exceptional cases where an organ is retained.
- 4.23 Unless notification of retention is given and the organ retention form submitted to the Procurator Fiscal, in all other cases the Procurator Fiscal will be entitled to proceed on the basis that on completion of the post-mortem and a medical certificate with the cause of death being issued by the pathologist, the body is complete and there are no organs retained.

Recommendation 6

COPFS should introduce one national organ retention form to be completed by the pathology service provider and COPFS in any case where an organ is retained after the body is released. The form should contain the following mandatory information:

- details of the deceased
- the type of organ retained
- where it is located
- how long it is likely to be retained
- when examination is complete
- date the body is released
- the instruction on disposal

Good Practice

The hard copy of the sudden death file should be clearly marked to highlight that an organ has been retained. The 'Death Report Task Instructions' which provide step-by-step actions to be taken by staff dealing with deaths investigation should be updated to include a step to advise SFIU National that an organ has been retained.

Good Practice

In any case where an organ is retained and an organ retention form is generated, all correspondence including emails and the organ retention form should be uploaded into the Standard Office System (SOS-R) file containing the death report and associated documentation.

Reconciliation Process

4.24 The organ retention database is the national repository of all data on organs retained and is the source of the information used in the reconciliation process.

4.25 Currently, at the beginning of each month, SFIU National creates a list of outstanding cases from the organ retention database. The list is emailed to all the mortuaries used by the pathology service providers. It is expected that mortuary managers/pathologists will undertake a physical check and send an email confirming that the information is accurate or provide an explanation if it does not accord with their records.

4.26 The information provided includes:

- name of deceased
- type of organ retained
- date of retention
- purpose of retention
- where it is currently held
- likely date of return
- date Procurator Fiscal is notified

4.27 There are some aspects that would benefit from further clarification and more robust procedures. Firstly, not all the pathology service providers appear to be aware that a monthly return is required and, in some areas, the pathology service providers have interpreted the request as only requiring a return if their information does not accord with that contained in the email. There is a lack of clarity in some departments on who is responsible for providing the information to SFIU National and returns are not being received in a timely manner. In at least one entry the information regarding the case was erroneous and there were cases where an instruction on disposal of the organ had been provided by the nearest relatives but the entry had not been removed from the database.

4.28 Given the importance of a robust reconciliation procedure and the small number of cases where organs are retained, there are a number of measures recommended to strengthen the process.

Recommendation 7

For reconciliation purposes, a copy of the national organ retention database should be sent each month to a nominated post holder such as the mortuary manager or the administrative manager for each pathology department.

- The requirement to provide a monthly return, including timescales for returns, should be incorporated into all pathology service providers' contracts.
- There should be an agreed stage when entries are removed from the national organ retention database. For example, when the wishes of the nearest relative have been provided to the pathologist.
- SFIU National should create and maintain operational instructions for duties relating to the operation of the Organ Retention Database.

4.29 The benefit of sending a copy of the database rather than a list of cases is that it will allow any information wrongly entered to be identified quickly by the relevant pathology department and the database will have up-to-date information on the status of the case and helpful commentary such as likely review periods. It also introduces certainty that the data being reconciled by SFIU National and the pathology service providers is the same. Annex C provides a flowchart of the proposed recording process for a retained organ.

Part 5: Provision of Pathology Services

5.1 The pathology service required by COPFS has been procured by a number of contracts negotiated with NHS Boards or Universities in each Federation area. The extent of the provision of pathology services differs between the different pathology service providers and the result is a complex and fragmented provision of services. The provision of pathology services across Scotland broken down by forensic specialisation is set out in Table 2.

Table 2: Pathology Provision in Scotland⁴⁰

	NON-FORENSIC	FORENSIC	PAEDIATRIC	NEUROPATHOLOGY
EAST FEDERATION				
Lothian and Borders	NHS Lothian University Hospitals Division	NHS Lothian University Hospitals Division	Southern General Hospital	NHS Lothian University Hospitals Division
Central	The University of Dundee	NHS Lothian University Hospitals Division	Southern General Hospital	NHS Lothian University Hospitals Division
Fife	The University of Dundee	NHS Lothian University Hospitals Division	Southern General Hospital	NHS Lothian University Hospitals Division
NORTH FEDERATION				
Highlands and Islands ⁴¹	NHS Highland	NHS Highland	NHS Highland	NHS Lothian University Hospitals Division
Grampian	The University Court of the University of Aberdeen	The University Court of the University of Aberdeen	The University Court of the University of Aberdeen	NHS Lothian University Hospitals Division
Tayside	The University of Dundee	The University of Dundee	Southern General Hospital	Southern General Hospital
WEST FEDERATION				
Glasgow and Strathclyde	The University Court of the University of Glasgow	The University Court of the University of Glasgow	Southern General Hospital	NHS Lothian University Hospitals Division
Ayrshire and Arran	NHS Ayrshire and Arran	The University Court of the University of Glasgow	Southern General Hospital	NHS Lothian University Hospitals Division
Dumfries and Galloway	NHS Dumfries and Galloway	The University Court of the University of Glasgow	Southern General Hospital	NHS Lothian University Hospitals Division

40 As at March 2014

41 With the exception of Shetland which is covered by the University of Aberdeen

Contractual Provisions

- 5.2 Each pathology service provider has an individualised contract with COPFS but there are a number of mandatory requirements that apply to all pathology service providers. These include:
- Timescales for the submission of post-mortem reports.
 - Provision of forensic pathology on call resource including, when required, conducting post-mortems outwith normal working hours.
 - To prepare and present reports on examinations, provide statements and appear as expert witnesses in criminal courts or FAIs.
 - All post-mortems to be performed by qualified personnel following best medical practice and in accordance with any guidelines issued by The Royal College of Pathologists and the Scottish Government Justice Department.
 - To attend case conferences in homicide cases and/or meet the families to explain their findings.
 - Attendance at formal monitoring meetings to be held once per quarter to review performance levels against targets.
 - Provision of quarterly and annual management reports to COPFS.
 - Where organs and/or tissue blocks and slides require to be retained for further examination in order to reach a diagnosis, this should be made known to the Procurator Fiscal on the same day as performance of the post-mortem.
 - To issue the Death Certificate on the same day as performance of the post-mortem.
 - Pathologists should take part in COPFS training events.

- 5.3 Other than imposing a duty to inform the Procurator Fiscal if organs, slides or blocks are retained for further examination on the same date as the post-mortem, the current contractual arrangements do not provide any other obligations relating to organ retention. To reinforce and strengthen procedures, the following amendment and additional provisions should be agreed and included in the pathology providers' contracts.

Recommendation 8

The existing contracts between COPFS and the pathology service providers should be amended:

- To provide a presumption that the death certificate should be issued when the body is released.

The contracts should be revised to include:

- A requirement to provide immediate and written notification to COPFS if an organ is retained beyond the deceased's body being released. (It is envisaged that this will be done by submitting the organ retention form.)
- To provide monthly returns within specified timescales to a nominated contact person/post holder in COPFS specifying details of any organs being held. A physical check should be undertaken each month and reconciled with the information provided by COPFS.
- To dispose of any organs in accordance with a written instruction provided by the Procurator Fiscal.

Part 6: Communication with Nearest Relatives

- 6.1 The public's attitude to death and the care of the deceased's body after death has evolved, reflecting cultural diversity and an expectation of being involved and consulted in all important decisions regarding their relatives.
- 6.2 Bereaved relatives need to be given information in language they can understand, by people they have confidence in, and to be assured that their wishes will be taken into account.
- 6.3 In terms of the Equality Act 2010, COPFS is subject to the public sector equality duty ('the general duty'). The general duty requires COPFS to have 'due regard' to the need to:
- 6.4 In a report published by COPFS in 2013⁴³ the Crown Agent stated:
- 6.5 The report emphasised COPFS commitment "to treating all individuals, including those with protected characteristics, with sensitivity, dignity and respect".
- 6.6 In furtherance of the needs set out in the general equality duty, COPFS has developed a number of equality outcomes⁴⁴ to underpin its mainstreaming of equality in 2013 to 2017. These include among others:

Equality Act 2010

- Improving COPFS understanding of the different needs of people with 'protected characteristics' and providing a service suited to their needs.
 - Ensuring COPFS services are accessible to all whatever their needs by making premises accessible and providing appropriate means of communication.
 - Ensuring COPFS staff are knowledgeable about people with protected characteristics so that their needs are considered and they are treated with respect.
- (a) Eliminate discrimination, harassment, victimisation and other conduct prohibited by the Act.
- (b) Advance equality of opportunity between people who share a relevant 'protected characteristic'⁴² and those who do not.
- (c) Foster good relations between people who share a relevant 'protected characteristic' and those who do not.

Equality and Diversity

- 6.7 Equality must be integral to all COPFS functions, including the investigation of deaths, so that services meet users' needs and are accessible to all. In relation to the investigation of deaths and, in particular, post-mortem examination and retention of organs, COPFS has established policies and practices designed to meet the goal of accommodating the diverse needs of service users.

42 Age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation and marriage and civil partnership in relation to employment issues

43 COPFS Equality Outcomes and Mainstreaming Report which is available on COPFS public website

44 Equality Outcomes are the results which a public authority seeks to achieve in furtherance of the needs set out in the general equality duty

6.8 There is a wealth of information on equality and diversity issues available to staff on the Knowledge Bank on the COPFS Intranet and, to improve access and communication for all users of its services, COPFS has provided a range of aids and facilities. The main guidance manuals of specific interest to the investigation of deaths and the aids and measures available to facilitate individual needs are outlined at Annex D.

Liaison with Bereaved Relatives

6.9 The Procurator Fiscal is responsible for liaising with bereaved relatives in all deaths and keeping them updated on the progress of the investigation in accordance with carrying out a proper investigation. In particular, nearest relatives should be alerted as soon as possible if organ retention appears likely to occur. In such cases, where compatible with the proper conduct of the investigation, the nearest relatives are entitled to an explanation on the nature and purpose of the retention, the type of organ retained and the likely duration of the retention, and their views on the disposal of the organ must be canvassed.

6.10 In all death reports submitted to the Procurator Fiscal, the police should include information on cultural and religious issues which may have an impact on how the investigation is progressed and how the communication and accessibility needs of nearest relatives can be met.

6.11 While COPFS guidance acknowledges that it may not always be possible to satisfy the wishes of relatives if a post-mortem is required in the public interest, it stresses that all reasonable efforts should be made to identify any religious or cultural issues and to accommodate the nearest relatives' wishes if this does not compromise a proper investigation.

It emphasises the distress that is caused to certain faith groups if there is a delay prior to burial and that for some faith groups a post-mortem examination is only acceptable if required by law and if the body is buried intact.

Publications

6.12 COPFS has published information booklets and leaflets for bereaved relatives. A recently revised booklet entitled 'Information for Bereaved Relatives – The Role of the Procurator Fiscal in the Investigation of Death' can be accessed on the COPFS public website. Various national groups and the Equality Advisory Group (EAG)⁴⁵ were consulted on the content of the booklet. It is aimed at helping relatives to understand the function of the Procurator Fiscal and what is involved in the investigation of various categories of death. It explains in straightforward terms the legal issues and refers bereaved relatives to other external publications which may assist them where, for example, the death is due to homicide or a road traffic accident⁴⁶.

6.13 The booklet provides advice about dealing with matters such as registering the death certificate and provides contact details for agencies that offer support to bereaved families.

6.14 There are a number of translated versions available online and others are available on request. There is also an 'Easy Read' version for those with learning difficulties. The booklet is available in electronic format only to allow changes to be made easily if required. This avoids the additional cost

⁴⁵ See Annex E for definition

⁴⁶ Scottish Government publication 'Information for bereaved family and friends following murder or culpable homicide' and the Brake publication 'Information and advice for bereaved families and friends following a death on the road in Scotland'

of having to discard out-of-date printed copies. Letters sent to bereaved relatives refer to the booklet and advise that it can be made available in hard copy format on request.

6.15 Bereaved relatives can also access VIA leaflets online. One leaflet provides advice to bereaved relatives in crime related deaths and another leaflet, 'How We Can Help You', explains the VIA service and how VIA can help bereaved relatives where there is to be a FAI or extensive investigation. Both leaflets are available in electronic format on the COPFS website and hard copy versions can be made available on request.

6.16 In addition there is online a booklet entitled 'Death and the Procurator Fiscal – Information and Guidance for Medical Practitioners'. This is intended to offer advice to doctors on whether a death needs to be reported to the Procurator Fiscal although bereaved relatives may also find it informative.

Liaison in Non-Suspicious Deaths

6.17 All deaths reported to COPFS where there is no suspected criminality are dealt with by SFIU. There are some categories of death such as suicide, a death arising from a road traffic collision or where a FAI may be held where COPFS policy is that the nearest relatives should automatically be offered a meeting. The purpose of the meeting is to explain the role of the Procurator Fiscal and the Victim Information and Advice service, to provide information on the circumstances of the death and to assist with any queries face-to-face. In such cases there will normally be VIA involvement. The role of VIA is to keep relatives informed about the progress of the death investigation and to provide contact information about agencies able to offer advice and support.

6.18 It is recognised that paediatric post-mortem examinations give rise to particular sensitivities. The Scottish Cot Death Trust⁴⁷ (SCDT) emphasised the importance of ascertaining how a family wants to receive information. From their experience, they advised that the preference is usually for the initial contact to be made personally by telephone followed by a letter. Early and personal contact provides reassurance that the Procurator Fiscal is approachable although in some cases it may be preferable for the Procurator Fiscal to liaise with the family through someone who has already formed a relationship with them such as a General Practitioner or their undertaker.

6.19 SCDT cautioned against the use of 'legalese' in correspondence and stressed the need to use sensitive language and avoid using terms such as 'the case'. It commented favourably on the content of letters issued following the Deaths Conference held by COPFS in October 2013 which sought input from agencies such as SCDT and the Scottish Association for Mental Health (SAMH). SCDT also provided positive feedback on the service provided by SFIU commenting that it provided greater certainty on whom to contact. It also found the staff in SFIU approachable and that they responded to queries in a timely, knowledgeable and helpful manner.

6.20 The only concern expressed was that families may have to travel some distance to where the Fatalities Unit is based. However, SFIU confirmed that their staff are happy to facilitate meetings at other Procurator Fiscal offices, where appropriate.

⁴⁷ SCDT – cot death charity which funds research into the causes of cot death, offers support to bereaved relatives and educates the public and professionals on cot death and how to reduce the risks

Liaison in Suspicious Deaths

- 6.21 There is a Joint Protocol between Police Scotland and COPFS regarding family liaison to provide information and support to bereaved relatives during certain investigations which may lead to criminal or other proceedings.
- 6.22 Following any death where criminality is suspected, the police will normally appoint a Family Liaison Officer (FLO). These are police officers with special training in investigation and communication. Their primary role is as a police investigator but they also provide a critical conduit to obtain relevant family information including whether there are any religious or cultural sensitivities or any other equality issues. They provide a direct line of communication between the families of victims and the police and are often best placed to provide updates on the investigation and contact details of support agencies. The FLO liaises with the Procurator Fiscal on such matters as post-mortem arrangements and the release of the deceased's body to the family. If the body cannot be released in compliance with the wishes of the nearest relatives then the Procurator Fiscal will advise the FLO of the reasons so that this can be shared with the family.
- 6.23 While the Joint Protocol does not specifically mention organ retention, it is common practice for the FLO to keep the nearest relatives advised if it is likely that an organ will have to be retained although the Procurator Fiscal will always be available to provide further details on the reason for any retention and timescales.

- 6.24 At an agreed time, responsibility for liaising with the nearest relatives will transfer from the FLO to a COPFS Victim Information and Advice (VIA) officer attached to the homicide or high court team. A meeting is offered to the nearest relatives in any case where there is likely to be a prosecution if, for example, the death has resulted from a road traffic incident. This is done by an official handover meeting with the family, FLO and VIA.

Information Portal

One recent innovation by COPFS relates to the availability of an information portal on the COPFS website for bereaved relatives of those that died in a helicopter accident involving multiple fatalities. The website is updated with information about the ongoing enquiry and can be accessed via a unique password. This enables COPFS to keep families informed and to allow them access to information when they choose. The booklet for bereaved families is available on the portal. This is an excellent and innovative application of technology aimed at providing up-to-date information in a readily accessible format to a large number of relatives. The use of the portal is designed to ensure that consistent and accurate information is provided to all simultaneously. At an appropriate time, the use of the portal should be evaluated to ascertain if it achieved these objectives and if the nearest relatives' experience has been positive. If so, we would encourage the use of such portals for any major incidents involving multiple fatalities.

Notification of the Retention of an Organ

- 6.25 Nearest relatives must be informed at the earliest possible time if an organ has to be retained for further investigation.
- 6.26 We found within the three Fatalities Units different means of communicating with nearest relatives. In the East and West, the initial contact to discuss retention of an organ is usually made through personal contact by a senior member of legal staff. In the North, contact may be made by a member of SFIU but it is also common to communicate through the family undertakers who have established a relationship with the family on the understanding that the nearest relatives can contact the SFIU, if they so wish.
- 6.27 While there are variations on the means of communication with bereaved relatives across the country depending on the circumstances, the essential requirements are that the information provided is timeous, sensitive and appropriate to meet the needs of the bereaved relatives and that in all cases a contact point within SFIU is provided to the nearest relative.
- 6.28 Similarly, while it is entirely appropriate for correspondence to be personalised to reflect the specific and different circumstances of each case, it should contain the same information content and reflect similar language.

- 6.29 Organisations who work with the bereaved advocate that contact with relatives is best done personally, whether through the police, funeral director, doctor or social worker. It is essential that nearest relatives should be contacted as early as possible on any issue relating to organ retention so they can make a decision about appropriate funeral arrangements. This is particularly significant for relatives with religious or cultural affiliations as delay in providing such information can cause distress.
- 6.30 While it is appropriate for SFIU to assess who is best placed to initially contact the nearest relatives to advise that an organ has been retained, it is the responsibility of SFIU to follow up any such communication in writing.

Disposal Options

- 6.31 In the few cases where an organ may be retained following the deceased's body being released, it is incumbent on COPFS to seek the views of the nearest relatives on the disposal of the organ after the further examination has been completed. Procurators Fiscal are advised to ensure that nearest relatives are informed of the options that are available. The options being:
- disposal by pathologist
 - separate burial/cremation
 - delaying the funeral
 - authorisation for retention for medical research
- 6.32 Disposal should be in accordance with any reasonable wishes of the nearest relatives. One area highlighted by pathologists is that information on the families' wishes is often communicated by phone or email. To ensure there is an appropriate audit trail, this information should be provided in writing.

Recommendation 9

All communication on the wishes of the nearest relatives should be provided in writing to the pathologist who should acknowledge receipt. The written instruction and the receipt should be retained in the electronic death file.

6.33 Some relatives may not wish to engage in a discussion on the disposal of the organ. In such circumstances, COPFS should ensure that the relatives are provided with a contact point in case they wish to seek information at a later date. The identification of cases in the COPFS audit where organs had not been disposed of due to a lack of engagement or instruction from the nearest relatives, highlighted that there was no procedure or policy to deal with such cases. In such circumstances, efforts should be made to ensure that the nearest relatives have an informed understanding of their options but if they choose not to engage with COPFS then there should be a cut-off point beyond which any organs retained are disposed of by the pathologist.

6.34 In some cases, tracing nearest relatives has proved problematic. In such cases, if after undertaking all reasonable inquiries, COPFS is unable to trace any nearest relatives, the Procurator Fiscal should instruct the pathologist to dispose of the organ.

Recommendation 10

If nearest relatives fail to engage on the disposal of an organ, COPFS should arrange for a second communication, either in person if there is an established rapport, or by recorded delivery of correspondence seeking their instruction. This second communication should advise that COPFS will arrange for the pathologist to dispose of the organ if the nearest relatives fail to engage or provide an instruction on their wishes within a specified period of time.

If, after undertaking all reasonable inquiries, COPFS is unable to trace any nearest relatives, the Procurator Fiscal should instruct the pathologist to dispose of the organ.

ANNEX A

England and Wales and Northern Ireland (E&W and NI)

In England and Wales and Northern Ireland post-mortems are primarily conducted on the authority of the Coroner. The Coroner has a similar, although not identical, function to the Procurator Fiscal in Scotland in relation to the investigation of deaths. The Coroner will instruct such investigations as is necessary to ascertain the cause of death. However, consideration of suspicious deaths involves both the Coroner and the police and seizure of samples, including samples taken at a post-mortem, for the purpose of the criminal investigation will be held under the authority of the police rather than the Coroner. Such samples are listed by the police as exhibits. The relevant Act governing the removal, storage and use and disposal of human tissue samples at post-mortems in England, Wales and Northern Ireland, is the Human Tissue Act 2004, although samples taken for criminal proceedings are excluded from the Human Tissue Authority's (HTA) remit. There are other differences between the jurisdictions. Unlike Scotland, the HTA has the power of inspection of mortuaries and in England and Wales the pathologists are generally self-employed and contracted to perform post-mortems.

Audit of Organs in E&W and NI

In 2010, an audit of organs of significant body parts taken during a post-mortem following a suspicious death/homicide and no longer required for criminal justice purposes was conducted by police forces in England and Wales and Northern Ireland. It found that 492 organs or significant body parts were held by or on behalf of the police in various establishments but predominantly within storage facilities at scenes of crimes offices, NHS mortuaries and with forensic pathologists. Many of these related to historical cases and pre-dated the governing legislation in England and Wales and Northern

Ireland, the Human Tissue Act 2004.

As a result of the audit, ACPO (Association of Chief Police Officers), assisted by the then National Police Improvement Agency (NPIA)⁴⁸ published a report and made 10 recommendations. The main issues identified in the report were that at the end of an inquiry into a suspicious death, there was a lack of a nationally agreed process to ensure that human tissue was disposed of in an appropriate and timely manner and, as a result, police investigators may have wrongly assumed that human tissue seized at the post-mortem had been disposed of by the medical profession.

The report made 10 recommendations but two of the most significant were that the onus to review the retention of such material during and at the conclusion of the investigation was for the Senior Investigating Officer (SIO) and that a clear process following a decision that the case was no longer suspicious should be agreed between the Coroner and the police.

Following publication, HMIC (Her Majesty's Inspectorate of Constabulary) was commissioned⁴⁹ to undertake an inspection of the Police Service of Northern Ireland (PSNI) to provide assurance that the recommendations had been implemented in Northern Ireland. It concluded that the recommendations had largely been achieved although it did identify areas that still required to be progressed to ensure there was a consistent and accurate approach to the recommendations across all relevant organisations.

⁴⁸ The NPIA ceased to operate in December 2012. The NPIA forensic Pathology Unit which assisted ACPO with the audit and the report transferred to the Home Office

⁴⁹ The report was commissioned by the Minister of Justice for Northern Ireland

ANNEX B

Definition of Organs

Home Office Classification

In a document published by the Home Office prepared by the Forensic Science Regulator⁵⁰, Annex 1 provides guidance on the categorisation of material taken at a post-mortem held by police forces in England and Wales and Northern Ireland. The guidance provides three categories of material:

1. Category 1 – Material taken at the post-mortem examination which would not generally be considered part of the body (e.g. scrapings, fingernails, hair, stomach contents).
2. Category 2 – Samples of human tissue which are not a significant part of the body (e.g. small tissue samples, blocks, slides etc).
3. Category 3 – Samples of human tissue that incorporate a significant part of the body (e.g. organs, limbs etc).

Royal College of Pathologists

The Royal College of Pathologists has produced guidelines⁵¹ that apply UK wide for the retention of tissues and organs following post-mortem examination. In relation to organs it states: “The body contains many organs such as the brain, heart, kidneys, lungs and liver. Each organ carries out different functions. The organs are connected in the body by nerves, blood vessels and fibres”.

Tissue is described as: “Organs contain tissue, collections of cells which give organs their special functions. For example, the heart contains muscle tissue composed of cells which contract to pump the blood. Samples of tissue (typically small slices about ¼ inch thick) are usually taken during a post-mortem examination for examination with a microscope; this involves treating the tissue with chemicals and embedding it in wax; this wax-embedded tissue is then kept safely and securely so that it can be re-examined later if necessary”.

Human Tissue Act 2004

While there is similarly no definition of organ in the corresponding legislation that applies to England and Wales and Northern Ireland, within regulations flowing from the Act and applicable in Scotland⁵² an organ is described as meaning:

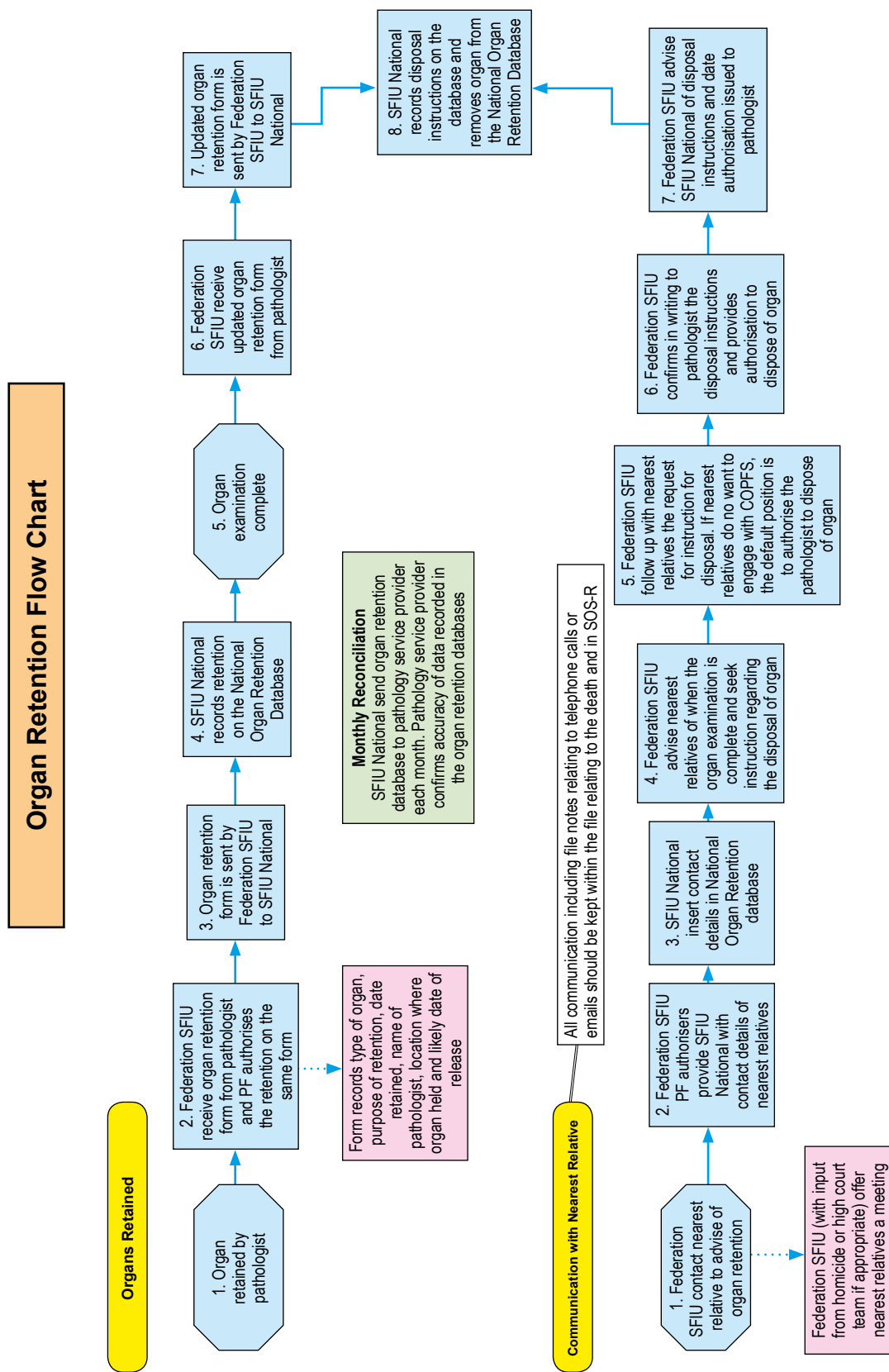
“A differentiated and vital part of the human body, formed by different tissue that maintains its structure, vascularisation and capacity to develop physiological functions with an important level of autonomy.”

50 Legal Issues relating to Forensic Pathology and Tissue Retention – Police and Coroners approach to forensic pathology, Issue 2, produced in 2012. This document relates to England, Wales and Northern Ireland.

51 Royal College of Pathologists: Guidelines for the retention of tissues and organs at post-mortem examination (2000)

52 Human Tissue Act 2004 (Persons who Lack Capacity to Consent and Transplants) Regulations 2006 – apply to Scotland

ANNEX C



ANNEX D

Guidance, Aids and Services

COPFS Guidance on the Investigation of Deaths

There are a number of guidance manuals available to staff dealing with the investigation of deaths including the following:

- Chapter 12 of the 'Book of Regulations' provides comprehensive guidance on COPFS policy and practice in relation to the investigation of deaths. This guidance is available on the COPFS public website.
- The 'Deaths Manual of Practice' is an internal practical guide on the investigation of deaths including a section on the needs of bereaved nearest relatives, highlighting the importance of considering individual needs and that communication should be conducted in a supportive and understanding manner. There is a specific section in the Manual on retention of organs.
- 'Diversity Resources for COPFS Staff – A Practical Guide' provides access to a significant amount of material to staff who may be dealing with bereaved nearest relatives with individual needs arising from one or more of the protected characteristics.
- 'Deaths Cultural and Religious Awareness Guide' includes specific guidance on death customs and traditions. It covers consultation with relatives; customary procedures for dealing with a deceased's body including family involvement in preparing the body; whether burial or cremation is essential; whether delay in burial or cremation is likely to cause distress; circumstances in which there may be sensitivities in conducting post-mortem examinations and removing organs; and whether organs should be returned to the

body prior to burial or cremation. It covers a number of faiths including Buddhism; Christianity; Hinduism; Islam; Judaism; and Sikhism. Cultural links covered include: Arabic; Bangladeshi; Chinese; Pakistani; Polish; Travelling Communities; Somalis and Turkish.

Aids and Services to Meet Service Users' Needs

The following aids and services provided by COPFS are to assist with meeting the needs of service users:

- Reasonable access to COPFS offices for persons with physical disabilities.
- Induction loops at all COPFS offices to assist those who are hearing impaired.
- A range of Interpreting, Translation and Transcription services are available. Staff can access 'Happy to Translate' facilities as well as Language Line to contact interpreters immediately by phone. Sign Language interpreters can also be provided and Text Relay (a service to assist persons with a hearing or speech impairment) is available. Documents can be translated into different languages and formats and Audio and Braille versions of documents can be supplied.
- Mandatory Diversity Awareness training, including Disability Equality training, is provided by COPFS to all staff. The diversity training for staff supports COPFS efforts towards meeting its equality duties and providing an effective and efficient service for all service users.

ANNEX E

Glossary of Terms

Advocates Depute

Advocates Depute are experienced prosecutors appointed by the Lord Advocate. Advocates Depute prosecute all cases in the High Court and present appeals in the Appeal Court.

Book of Regulations

A COPFS reference manual.

COPFS Federation Structure

COPFS is organised into four Federations, each led by a Procurator Fiscal. All operational work is managed within the East, West and North Federations. The fourth Federation is the National Federation which includes a number of specialist units including SFIU and all corporate functions.

Crown Counsel

The Law Officers (Lord Advocate and Solicitor General) and Advocates Deputes.

Crown Office and Procurator Fiscal Service (COPFS)

The independent public prosecution service in Scotland. It is responsible for the investigation and prosecution of crime in Scotland. It is also responsible for the investigation of sudden, unexplained or suspicious deaths and the investigation of allegations of criminal conduct against police officers.

Cruse Bereavement Care Scotland

A charity which seeks to help anyone experiencing bereavement to understand their grief and cope with loss⁵³.

Death Certificate

Term commonly used to refer to the medical certificate of cause of death required to enable registration of a death with the Registrar of Births, Deaths and Marriages in Scotland.

Equality Advisory Group (EAG)

A Group established in 2003 consisting of COPFS staff and external members with a remit “to provide independent and informed advice to COPFS in relation to the impact of existing and future policies and practices on diversity and the promotion of equality and fairness in service delivery and employment”⁵⁴.

Equality Impact Assessment (EIA)

A tool to assess the impact of applying a proposed new or revised policy or practice against the requirements of the public sector equality duty.

Fatal Accident Inquiry (FAI)

A court hearing presided over by a Sheriff which publicly enquires into the circumstances of some sudden, unexplained or suspicious deaths. A FAI must take place when someone dies in custody or a death is caused by an accident at work.

Fixation

The process of preserving the brain.

Family Liaison Officer (FLO)

Police officers with special training in investigation and communication who are assigned to communicate with and support families where there is a police investigation into an unexplained or violent death.

Forensic Pathology

Post-mortem examinations carried out where it is suspected that the death is not from natural causes (e.g. accidental, homicidal, suicidal or where there is evidence of violence) and in cases, including death by natural causes and death while under medical care, where a prosecution or Fatal Accident Inquiry (FAI) may be pursued through the courts.

Histology

The science concerned with the study of the structure, composition and function of tissues.

⁵³ <http://www.crusescotland.org.uk/>

⁵⁴ COPFS Equality Outcomes and Mainstreaming Report – 30 April 2013

Her Majesty's Inspectorate of Constabulary (HMIC)

An independent body which inspects and monitors police forces in England and Wales to promote and advance improvements in the efficiency and effectiveness of policing.

Her Majesty's Inspectorate of Constabulary for Scotland (HMICS)

An independent body which provides independent scrutiny into the state, efficiency and effectiveness of Police Scotland and the Scottish Police Authority.

Hospital Post-Mortem Examinations

Post-mortems normally undertaken to provide information on potential genetic disorders in the interests of the nearest relatives.

Human Tissue Authority

Body that regulates the removal, storage, use and disposal of human bodies, organs and tissue for purposes such as research, post-mortem examination and teaching.

Knowledge Bank

COPFS information database containing legal and non-legal guidance.

Lord Advocate

The Ministerial Head of COPFS. He is the senior of the two Law Officers, the other being the Solicitor General.

Law Officers

The Lord Advocate and the Solicitor General for Scotland.

Mortuary

Where deceased persons are kept until the arrangements for post-mortem and/or the removal of the body for burial or cremation are made.

Nearest relatives

Closest family to the deceased.

Neuropathology

Branch of medicine concerned with diseases of the brain and nervous system.

Non-Forensic Pathology

A post-mortem examination generally performed to confirm the cause of death due to natural causes and where no court proceedings are likely.

Organ Retention Database

Record maintained by SFIU National of all organs retained following the release of the deceased's body following a post-mortem examination instructed by Procurator Fiscal.

Paediatric Pathology

Branch of medicine concerned with the diseases and disorders of children.

Procurators Fiscal (PFs)

Legally qualified prosecutors who receive reports about crimes from the police and other agencies and make decisions on what action to take in the public interest and where appropriate prosecute cases. They also look into deaths that require further explanation and where appropriate conduct Fatal Accident Inquiries and investigate criminal complaints against the police.

Precognition

An interview of a witness by a Procurator Fiscal or defence lawyer taken to prepare for a court case.

Precognition Officer

A member of staff who interviews witnesses and prepares cases for court.

Post-Mortem Examination (also known as Autopsy)

Dissection and examination of a body after death to determine the cause of death conducted by a medically qualified pathologist.

Protected Characteristics

Age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation and marriage and civil partnership in relation to employment issues.

Quality Assurance (QA)

Improving performance and preventing problems through planned and systematic activities including documentation, training and review.

Royal College of Pathologists

Professional and advisory body which promotes the study, research and practice of pathology.

Scottish Cot Death Trust (SCDT)

A charity which seeks to improve and extend support for bereaved families, raise funds for research into causes of cot death and to educate the public and professionals on cot death.

Scottish Fatalities Investigation Unit (SFIU)

A national specialist unit responsible for investigating all sudden, suspicious, accidental and unexplained deaths in Scotland with designated teams in each COPFS Federation.

Sudden Death Report

A report submitted to the Procurator Fiscal by the police or a medical practitioner for any sudden, suspicious, accidental, unexpected or unexplained death in Scotland.

Sudden Infant Death Syndrome (SIDS)

The sudden, unexpected and unexplained death of an apparently well baby⁵⁵. It is also known as cot death.

Text Relay (formerly RNID/Action on Hearing Loss Typetalk)

A communication service for persons who are deaf, hard of hearing or have a speech impediment and who cannot use a standard voice telephone. It connects people using a textphone with those using a telephone or other textphone.

Tissue

A collection of cells that together carry out a specific role. Tissues include blood, blood vessels and muscle. Small samples or biopsies taken from organs are often classed as tissue.

Tissue blocks

Small tissue samples set into blocks made from paraffin wax. The blocks are sliced into very thin layers and stained with a special dye to be examined under a microscope.

Toxicology

Science dealing with poisonous materials and their adverse effect on living organisms.

VIA

A COPFS dedicated Victim Information and Advice service.

If you require this publication in an alternative format and/or language, please contact us to discuss your needs.

⁵⁵ <http://www.nhs.uk/conditions/sudden-infant-death-syndrome/Pages/Introduction.aspx>



© Crown copyright 2014

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN: 978-1-78412-470-0 (web only)

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland
DPPAS29890 (07/14)

Published by the Scottish Government, July 2014

w w w . s c o t l a n d . g o v . u k