



Protocol to ensure the provision of forensic pathology services in the event of regulatory action taken by the Human Tissue Authority in England and Wales

This Protocol is entered into between the:

- A. Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO)
- B. Human Tissue Authority (HTA)
- C. Pathology Delivery Board (PDB)

Institutional Background

1. ACPO is an independent, professionally led strategic body. In an equal and active partnership with Government and the Association of Police Authorities, ACPO leads and coordinates the direction and development of the police service in England, Wales and Northern Ireland. In this protocol the phrase “Chief Officers of Police” refers to the Chief Constables in England, Wales, Northern Ireland and the Commissioners of Police for the City of London and for the Metropolis
2. The HTA was established by Section 13 of the Human Tissue Act (the HT Act) and is responsible for the regulation, through licensing and inspection, of establishments in England, Wales and Northern Ireland where post-mortem examinations take place.
3. The PDB is established by the Home Secretary and contains members drawn from ACPO, the Association of Police Authorities, National Policing Improvement Agency

(NPIA), Coroners, Forensic Pathologists, the Crown Prosecution Service and the Forensic Science Regulator. It is responsible to the Home Secretary for maintaining the forensic pathology service for the criminal justice system in England and Wales.

Regulatory Framework

4. Under section 14 of the HT Act, the HTA's remit includes the storage and use of a deceased person's body and the storage, removal and use of material from a deceased person's body for scheduled purposes, including determining the cause of death. This includes post mortems undertaken on the instruction of and for the purposes of the coroner (Section 39 (2)). However, section 39 (1) of the HT Act exempts from the HTA's remit and the licensing requirements of the Act anything done for purposes related to the prevention or detection of crime or the conduct of a prosecution.

5. Forensic Pathology is a service provided to the Coroners and Police Authorities to investigate violent or suspicious deaths. Forensic Pathologists work within a regional group practice independent of the Police Service, NPIA and Home Office. All Forensic Pathologists are required to comply with the Code of Practice and Performance Standards, 2004. They may be self-employed, in partnership or employees of an NHS Health Trust, University or commercial forensic provider. Members of the register perform post mortems in a number of facilities operated by the local authority, the NHS or, potentially, the private sector. Currently members of the register are not prevented from being a 'Designated Individual' under the Act.

6. The HTA has the power to revoke or vary a licence if it is satisfied that:

- i. Any information given for the purpose of the application was false.
- ii. The Designated Individual has failed to discharge their duties.
- iii The Designated Individual is incapable of discharging their duties.

- iv. The licensed premises are no longer suitable for the licensed activity.
- v. The licence holder is no longer a suitable person to be a licence holder.
- vi. The Designated Individual is no longer a suitable person to supervise the licensed activity.
- vii. The Designated Individual dies.

7. The HTA has the power to suspend a licence where it has reasonable grounds to suspect that there are grounds for revoking a licence and is of the opinion that the licence should be immediately be suspended.

8. In exercising the power to revoke or vary a licence, the HTA has to give the licence holder and the Designated Individual notice of the proposed revocation or variation and is required to wait 28 days to allow the person to whom the notice has been sent to indicate if they wish to make representation.

9. No prior notice or warning is required by the Act in respect of suspension. The licence can only be suspended for up to three months at a time and in each case the duration of the suspension will be specified in the notification of suspension. The effect of the suspension is that the licences will be of no effect while a notice of suspension is in force, so licensable activities cannot take place during this period.

Commitments

10. It is agreed that ACPO and the PDB will support the Police Forces in England and Wales to produce by the **1 April 2013, a contingency plan to ensure business continuity** in the event of the inoperability of one or more of the mortuary facilities in the area. The facility may be unavailable as a result of:

- i. A key member of the Group practice no longer being available for service provision
- ii. Regulatory action taken by the HTA
- iii. Action taken by other regulators
- iv. Action taken by the operators of the facilities
- v. Damage to or destruction to the facilities

11. ACPO and the PDB will work with Police Forces to ensure that each Force reviews its business continuity plan annually and that a copy of the plan is retained by ACPO/NPIA

12. The PDB will ensure that members of the Register are aware of their responsibility to ensure that they perform post mortem examinations only on premises that are suitable for the purpose and which comply with the Forensic Science Regulator's mortuary standards.

13. The PDB agrees to notify the HTA, as a Designated Party under the Board's Disciplinary Procedures, if a member of the Register, who is also a Designated Individual is referred to a Summary Hearing Panel or Disciplinary Tribunal by the Board's Disciplinary Committee.

14. The HTA agrees that if it identifies a serious cause for concern that could lead to a suspension of licence in a mortuary facility used by forensic pathologists, or that requires immediate suspension of licence, prior to any significant regulatory action being taken immediate contact is made with:

- i. the Chief of Police in the area
- ii. the Secretary of the PDB
- iii. the relevant Coroner
- iv. the establishment's Chief Executive Officer

The objectives would be: (i) to undertake an impact assessment to inform the decision and actions taken by the HTA and ensure that they are proportionate and risk based, and (ii) to instigate activation of the contingency plan for that area, where relevant.

15. In the event of 14 above, the HTA, PDB and the relevant Police force will consider the appropriate level of communications (given the possibility of criminal investigation) required with the:

- i. Licence Holder
- ii. Designated Individual
- iii. Employer of the Designated Individual
- iv. Local Coroners in neighbouring areas whose business continuity plans may be impaired as a result of suspension of a mortuary facility
- v. Ministry of Justice – Coroners Division
- vi. Chief Officers of Police for neighbouring areas whose business continuity plans may be impaired as a result of suspension of a mortuary facility
- vii. Other Service Providers – University/FSS/NHS Trust/Local Authority

viii. Department of Health/Welsh Assembly Government

ix, Forensic Science Regulator

x. Local Authority as a Health & Safety authority

xi. Health & Safety Executive

xii. Medicines and Healthcare Products Regulatory Agency

16. Where the HTA suspects the possibility of a criminal offence under the HT Act, it will act in accordance with its Protocol for managing potential criminal breaches of Human Tissue legislation and seek guidance from the police to ensure as far as possible the protection and preservation of evidence.

17. ACPO & PDB will make arrangements so that if any criminal offences under the HT Act are alleged at facilities used for forensic post mortems in any force area, then to avoid the risk of the impression of a conflict of interest or damage to working relationships, consideration should be given to passing the investigation to another force, or division of the force.

18. For the avoidance of doubt, the parties to this protocol do not intend to create legal relations or a legally binding contract, by agreeing to this protocol and remain free to exercise their respective powers, unfettered by the terms of this protocol.

19. This protocol will be reviewed annually by the **PDB, ACPO and the HTA**. The PDB will be responsible for initiating this review.

**Association of Chief Police Officers
Human Tissue Authority
National Policing Improvement Agency**



Chair
Pathology Delivery Board



Pathology Lead
Association of Chief Police Officers



Chief Executive
Human Tissue Authority

13 January 2011