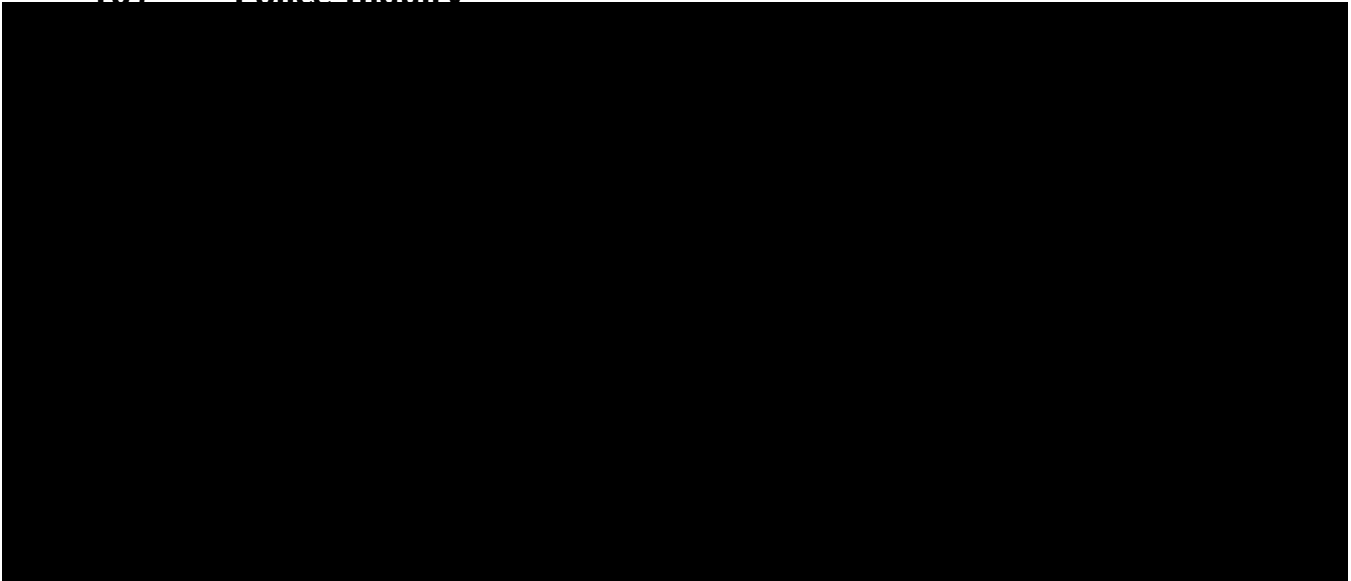


# Deaths Manual of Practice

- 1) Introduction and Glossary and Diagrams
  - 2) Reports of Death to the PF
  - 3) No Criminality or Negligence
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  - 5) Issues Surrounding Identification of a Deceased in potentially Criminal Cases
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- 

# **Expert Evidence Manual**

## **Home Office Circular 94/1985 Deaths occurring in Scotland**

### **Introduction Section 01**

Article 2 of the European Convention of Human Rights provides that:  
"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

The right to life implies certain obligations on the State to undertake an "effective investigation" which is:

- Independent
- effective
- reasonably prompt
- Open to a sufficient element of public scrutiny
- One in which the next-of-kin must be involved to an appropriate extent.

These considerations should be central to all deaths investigations undertaken by COPFS and all decision making and reporting should demonstrate how the Article 2 requirements of an effective investigation have been taken into account.

Further guidance on Article 2 and its requirements is available on the Knowledge Bank and work is underway to mainstream Article 2 requirements throughout COPFS policy, practice and guidance.

### **Jurisdiction and Glossary**

The right of the Procurator Fiscal to investigate sudden deaths;

The first reference to the investigation of deaths is in 1765 when the Crown Agent and the Depute Clerk of Justiciary prepared, "rules to be observed in taking precognitions and making presentments for trial of crimes before the Circuit Courts".

These rules were revised by Lord Hailes and sent to all Sheriffs and their Procurators Fiscal. At that time the Sheriff was responsible for investigation of crime and the Procurator Fiscal assisted him. At the end of the investigation the Procurator Fiscal petitioned the Sheriff to transmit all the papers to the Lord Justice Clerk with a view to proceedings in the High Court.

Rule No 3 reads:

"where any dead body is found with the appearance of violence upon it or where any person dies and is suspected to have died by violence the dead body must be opened and also the head and a report made of the cause of death of the person by physicians and surgeons."

There is no question of any warrant nor of any right to the relatives to object. In contrast, Rule No 9 reads:

"in searching the body of a woman suspected of having brought forth a child, her breasts and body must be examined by skilled persons upon the warrant of a Judge or Magistrate".

It appears that at that time the view was taken that the Sheriff had a common law power to order a dissection of a dead body but a warrant had to be obtained from a court before a living person could be examined.

These rules remained in force until 1824, by which time criminal procedure had changed.

The Lord Advocate and his Solicitor General took the view that the 1765 rules were defective and they issued a revised edition. These rules commenced by saying

"in most of the higher class of cases, particularly those of murder, fireraising etc., much advantage may be derived from the Procurator Fiscal and Sheriff (the Fiscal being given his correct place!), or other person of superior intelligence, repairing instantly to the spot so as to ascertain with precision all appearances that are there exhibited, such as marks of feet, blood etc."

and went on to say

"when there is any reason to suppose that death has proceeded from violence the body must be immediately examined and opened if necessary by persons of medical skill".

There is no mention of any form of warrant nor right of objection to the relatives.

The rules of 1765 and 1824 became in the course of time the foundation of the present book of regulations. During the course of the last 2 centuries the Sheriff gradually dropped out of the picture as an investigator and his duties in that respect were taken over by the Procurator Fiscal. Whatever powers the Sheriff had at common law were passed to the Procurator Fiscal.

The Procurator Fiscal has the right and duty, on his or her own behalf to investigate all sudden, suspicious, accidental, unexpected and unexplained deaths of which he or she is made aware.

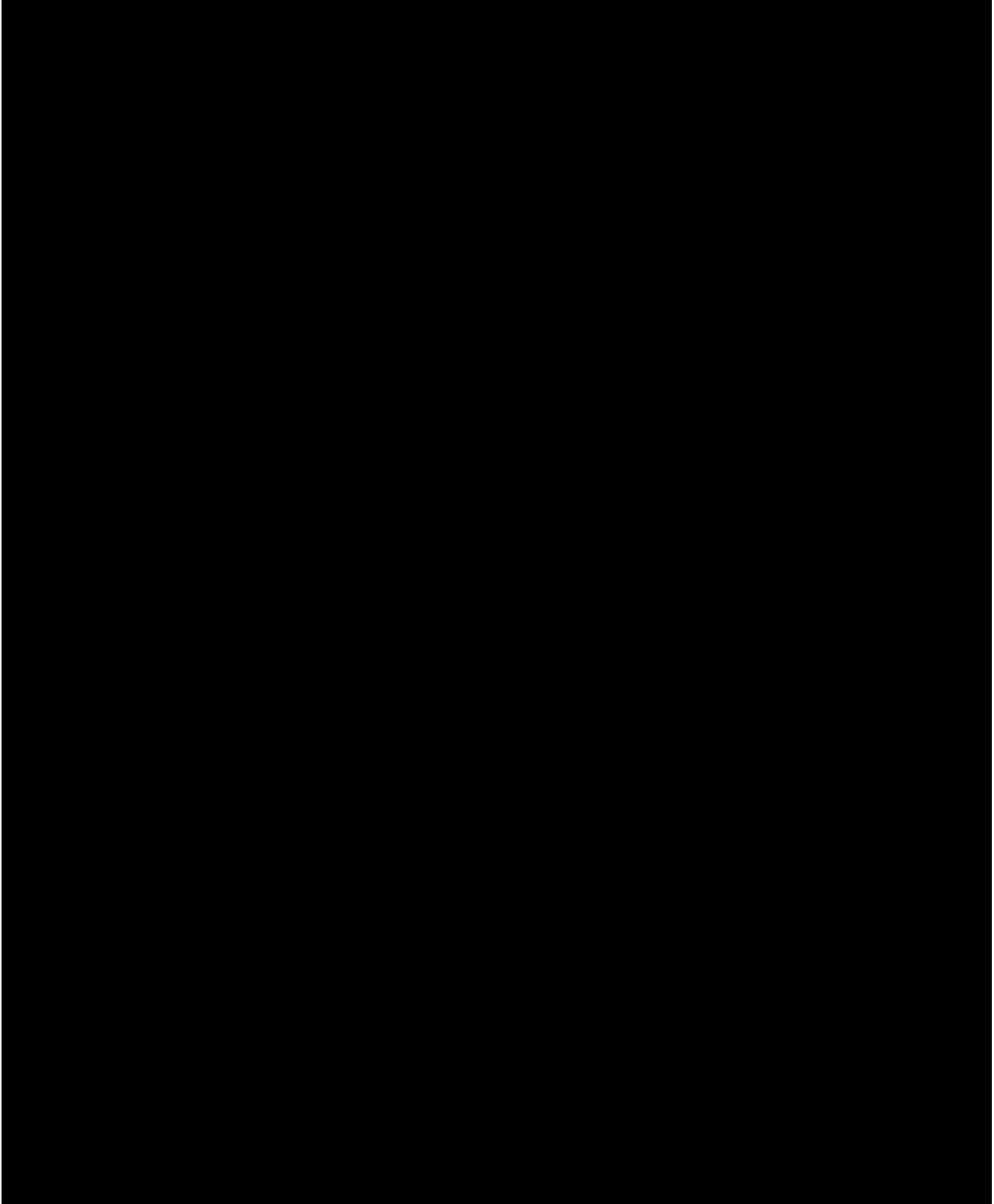
## **Jurisdiction**

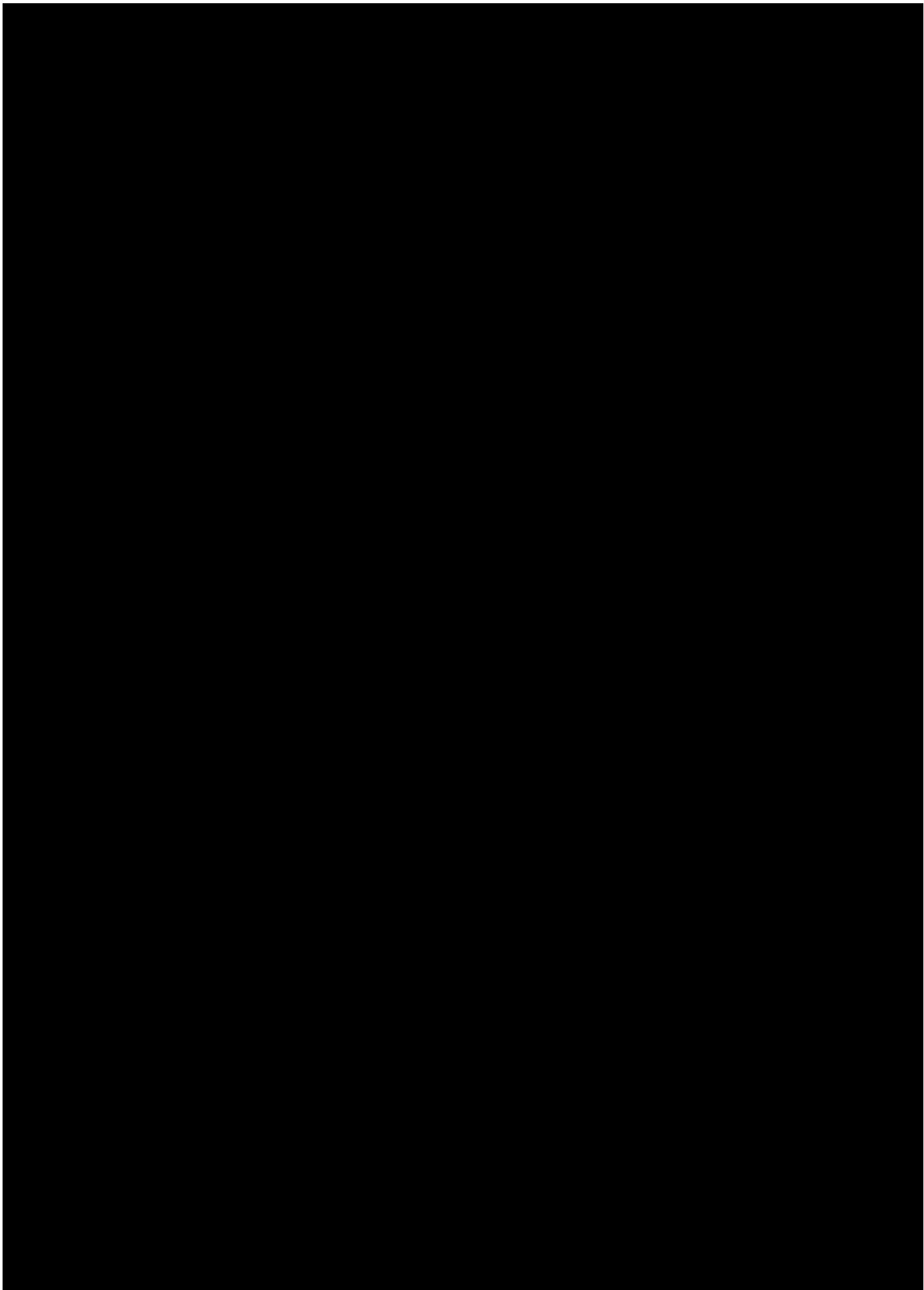
The Area Procurator Fiscal in whose Area is the District where the most significant event leading to the death of a person occurs is responsible for initial enquiry into the circumstances of that death. Jurisdiction to investigate deaths arising from possible criminal circumstances is dealt with in [Chapter 14](#) of the Book of Regulations. The territorial jurisdiction of the Procurator Fiscal is extended by the 1976 Act for the purposes of investigation and conducting a FAI. In addition, consideration must be given to questions of jurisdiction where a death occurs on or in relation to a ship, hovercraft or aircraft.

If an accident takes place in one area, and the death occurs in another, then the circumstances of the death might be more closely connected with the place where the accident occurs, but in a death where there are issues of medical care, for example, the appropriate jurisdiction may be where the death occurs or

where the medical treatment took place. Each case must be decided on its own facts.

The death or a significant event leading to the death must occur within the territorial boundaries of Scotland, both actual and extended. However, the Procurator Fiscal must make some initial enquiry into all deaths brought to his or her attention. That enquiry may go no further than to establish jurisdiction, but where the body is in Scotland, may involve steps to determine a cause of death and to eliminate suspicion of a criminal act. Thereafter a decision will require to be made as to whether further investigation is justified.





## Deaths Manual of Practice Glossary

### A

A- or An- without *Anoxia* = without oxygen

Ante- before *Antemortem* = before death

Anti- against *Antiseptic* = prevents sepsis

-aemia in or of the blood *Anaemia* = no (or less than normal) blood

-algia Pain *Neuralgia* = pain in a nerve

Aden(o)- Glands *Adenitis* = inflammation of glands

Angio-. Blood vessels *Angiospasm* = spasm of the arteries

Arthr(o)- Joints *Arthralgia* = pain in the joints

**Abrasion** The rubbing off of the surface of the skin.

**Aneurysm** Swelling on blood vessel, usually artery. Rupture often fatal. The bulging out of the lining in an artery through damaged outside wall.

**Anoxia** Absence of oxygen. Where the body tissues have an inadequate supply of oxygen.

**Arachnoid** One of the membranes covering the brain and spinal cord.

**Artery** Vessel which conveys blood away from the heart to the tissues of the body, limbs, and internal organs

**Asphyxia** Literally "absence of pulse" generally symptoms which follow stoppage of breathing and of the action of the heart.

**Atheroma** Degenerative change in Cardio vascular system. Vessel walls replaced by fatty material. Breaks down. Weakened wall structure,

**Atheromatous degeneration** Most common cause of aneurysm. Most common in aorta. Wall degenerates from atheroma, athero-sclerosis or hardening of the arteries.

**Atherosclerotic Cardio Vascular Disease** Hardening & narrowing of the blood vessels to heart, brain etc. May cause heart attack or stroke. Degenerative vascular disease.

**Atherosclerotic Coronary Artery Disease** Hardening & narrowing of blood vessels supplying the heart. Degenerative consequence of old age. May cause death by disturbance of heart rhythm.

### B

**Berry aneurysm** Aneurysm at base of brain in arteries. May have relationship with exertion, trauma, alcohol

**Bronchus** Each of two tubes into which the windpipe divides one to either lung.

C

Circum- Around *Circumoral* = around the mouth

Contra- Against, opposite *Contralateral* = on the other side

Cardio- Heart *Cardiomyopathy* = abnormality of the heart muscle

Cerebro- Brain *Cerebrospinal fluid* = fluid surrounding the brain and spinal cord

Chol(o)- Bile *Cholecystitis* = inflammation of the gall bladder

Chondro- Cartilage *Chondroma* = a tumour of cartilage

Colo- Large Bowel *Colostomy* = making an opening in the colon

Costo- Ribs *Costochondral* = of the rib cartilages

**Cardiac Arrest** Heart stops functioning.

**Cardiomegaly** Severe enlargement of heart. (Most common cause is high blood pressure).

**Cardiac Tamponade** Filling of bag around heart (pericardium) with blood. Caused by rupture of heart.

**Cerebral Haemorrhage** Natural disease causing bleeding into substance of the brain. Often called a stroke if leads to paralysis. Can be caused by hypertension (tearing of small artery), atheroma of cerebral arteries weakening the vessel wall.

**Coronary Arteries** Those arteries which supply blood to the heart itself.

**Coronary Artery Atherosclerosis** Severe hardening & narrowing of the Coronary arteries

**Coronary Artery Thrombosis** Coronary artery blocked by blood clot.

D

De- Away from *Dehydrate* = remove water

Dia- Through *Dialyse* = to pass through a membrane

Dys- Abnormal *Dysfunction* = abnormal function

**Dura** Outermost and strongest of the 3 membranes which envelope the brain and spinal cord.

E

En- or Endo- Within *Endotracheal* = within the trachea

Epi Outside *Epidermis* = outermost part of the skin

Extra- or Exo- Outside *Extradural* = outside the coverings of the brain, exogenous = produced from outside

-ectomy Removal *Prostatectomy* = removal of the prostate

Encephal( o)- Brain *Encephalitis* = inflammation of the brain

Enter( o)- Intestines *Enteritis* = inflammation of the intestine

**Embolism** Plugging of a blood vessel by material which has been carried through the blood stream from another location.

**Extradural Haemorrhage** Blood & blood clot between inner aspect of skull & outermost layer of the brain membranes (the dura matter). Invariably caused by head injury, usually with fracture of skull. Clot accumulates over hours or up to a day. Lucid interval. Haemorrhage presses on brain leads to unconsciousness. Pressure leads to failure of vital centres of brain stem which control heart & breathing.

G

-genic Producing *Pathogenic* = causing disease

Gastr(o)- Stomach *Gastro*-enterostomy = making a connecting hole between stomach and intestine

H

Hetero- Different *Heterotopic* = in the wrong place

Homo- Similar *Homozygous* = similar genes combined

Hyper- Excessive *Hypertrophy* = overgrowth

Hypo- Too little *Hypotension* = low blood pressure

Haem(o)- Blood *Haemothorax* = blood in the thoracic cavity

Hepat(o)- Liver *Hepatomegaly* = enlargement of the liver

**Haemoglobin** Colouring material which produces the red colour of blood.

**Haemorrhage** Any escape of blood from the vessels which naturally contain it.

**Hypertension** High blood pressure.

**Hypertensive Heart Disease** High blood pressure causing enlargement of heart.

**Hypotension** Low blood pressure

**Hypoxia** Reduction in oxygen

I & J

Infra- Below *Infraorbital* = below the eye

Inter- Between *Intercostal* = between the ribs

Intra- Within *Intrahepatic* = within the liver

Juxta- Beside *Juxtaposition* = closeness together

-itis Inflammation of *Laryngitis* = inflammation of the larynx

**Idiopathic** cause unknown.

**Idiopathic Cardiomegaly** Marked enlargement of the heart from an unknown cause.



**Infarction** The changes which take place in an organ when an artery is suddenly blocked leading to the formation of a dense mass in the parts of the organ supplied by that artery. It occurs as a result of embolism or thrombosis.

**Ischaemia** Inadequate flow of blood to part of the body

L

-logy Study of *Pathology* = study of disease)

**Lividity (Post mortem)** Colour change in the body after death caused by blood gravitating to the lowest part of the body.

M

-megaly Enlargement of *Splenomegaly* = enlargement of the spleen

My(o)- Muscle *Myasthenia* = wasting of the muscle

**Myocardial Infarction** Death of part of the heart muscle due to blockage of coronary artery. When not fatal, healing of muscle may leave scar tissue. Vulnerable to risk of sudden death from instability of heart muscle (cardiac arrest or fibrillation). Usually confined to left ventricle.

N

Nephr(o) Kidney *Nephrosis* = an abnormal process in the kidney

**Necropsy** Post mortem examination.

O

-oma Tumour *Adenoma* = a tumour of glands

-osis Abnormal process other than inflammation *Fibrosis* = proliferation of fibrous tissue

Oste(o) Bone *Osteology* = the study of bones

**Oesophagus** The tube which conveys food and drink from the throat down to the stomach.

P

Para- Close to, around *Paravertebral* = near the spine

Per- Through *Percutaneous* = through the skin

Poly- Many *Polymorphic* = many-shaped

Post- After *Post-traumatic* = after injury

Pre- In front of *Prepatellar* = in front of the knee cap

Proto- First *Prototype* = the original of the form

-pathy Abnormal structure or function of *Myopathy* = abnormal muscle

-plasia Growth *Hyperplasia* = excessive growth

Pneumo- Lung (or simply Air) *Pneumoconiosis* = an abnormality of the lung associated with dust;

*Pneumothorax* = free air in the thoracic cavity

**Pericardium** Sac around heart

**Peritonitis** Inflammation of the peritoneum, -in general, poisoning of the abdominal area.

**Pharynx** Another name for throat.

**Pia** The membrane closely surrounding the brain and spinal cord.

**Pulmonary** To do with the lungs.

**Pulmonary embolism** Blood clot forms in veins. Part breaks off to heart or to lungs. If large enough, will block major branches and cause rapid death. Common condition after operations, leg fractures, injuries of many kinds, immobility. If P.E. occurs about 3 weeks after the injury, the connection is strongly suspected. If about 2 months old, much more difficult to prove link between injury and death

R

Retro- Behind *Retrosternal* = behind the sternum

**Renal** Concerning the kidneys.

**Ruptured Atherosclerotic Abdominal Aortic** "Ballooning" & bursting of a weakness in major blood vessel caused by degenerative disease in blood vessels.

S

Sub- Beneath *Subcutaneous* = beneath the skin

Supra- Above *Supralabial* = above the lip

Syn- Together *Syndactyly* = web fingers

-stomy Making a hole *Tracheostomy* = artificial opening in trachea

**Sarcoidosis** Body's immune system attacks own tissues (auto immune disease)

**Septicaemia** A serious form of blood poisoning.

**Subarachnoid Haemorrhage** Bleeding beneath arachnoid, the inner layer of the two membranes covering the brain: Can occur:

As part of head injury where brain surface damaged, often with associated subdural bleeding.

As result of rupture of cerebral artery, often due to berry aneurysm. Extra exertion (sport, sexual intercourse, after fight or threat of violence). Relatively more frequent in women of child-bearing age.

Following trauma affecting the neck. Blood tracks upwards through base of skull & causes subarachnoid haemorrhage.

**Subdural Haemorrhage** Bleeding between inner & outer membranes of Brain. Always caused by injury. Source of bleeding is from veins crossing the subdural space to reach the large blood channels in the dura. Burr holes drilled in skull may evacuate clot but this may cause fatal brain damage. Lucid interval lasts minutes to days, before blood accumulates. May be contre-coup.

T

Trans- Through, across *Transplacental* = across the placenta

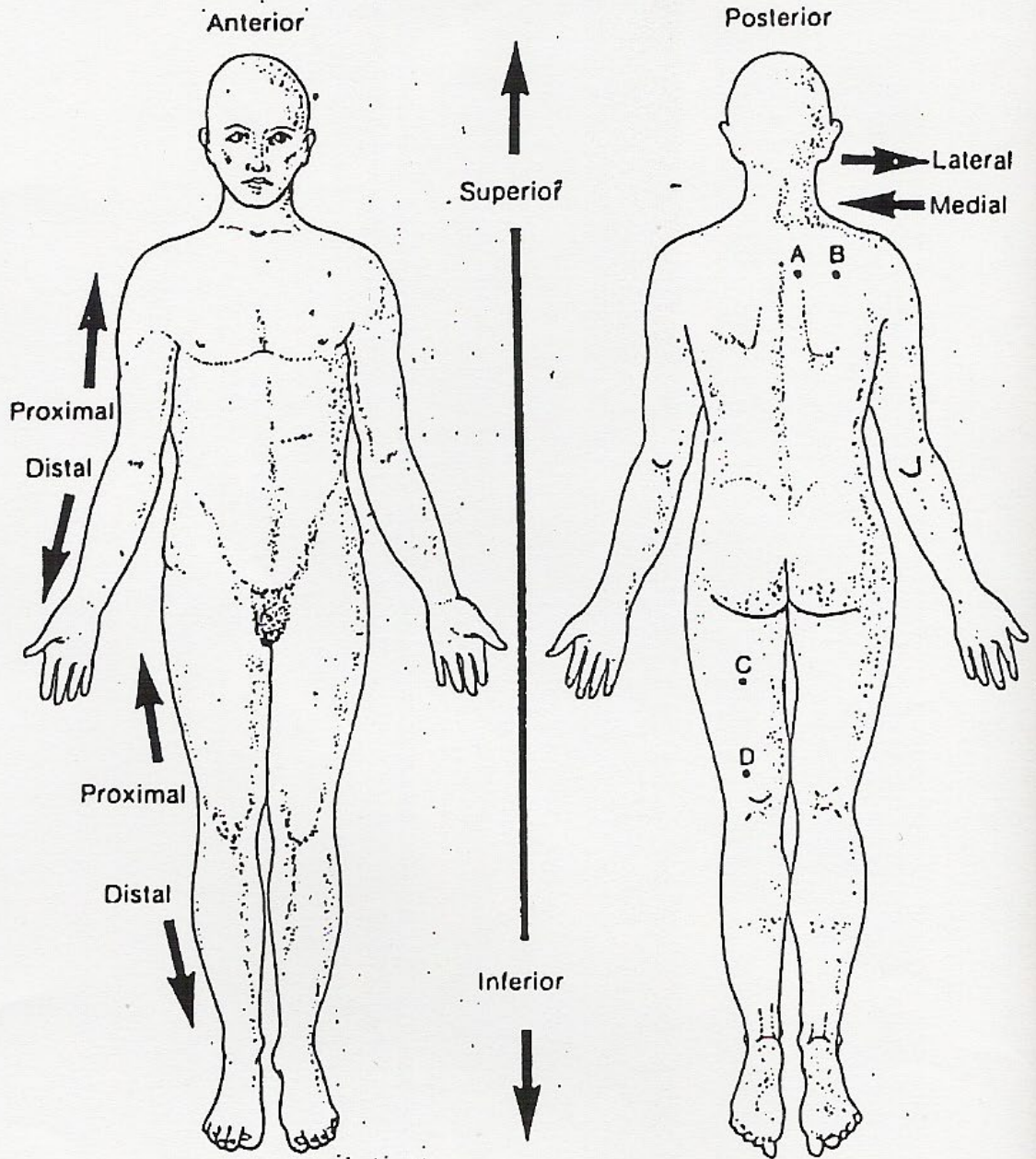
**Thrombosis** The formation of a blood clot within the vessels or heart during life.

**Thrombus** clot.

**Trachea** Another name for the windpipe.

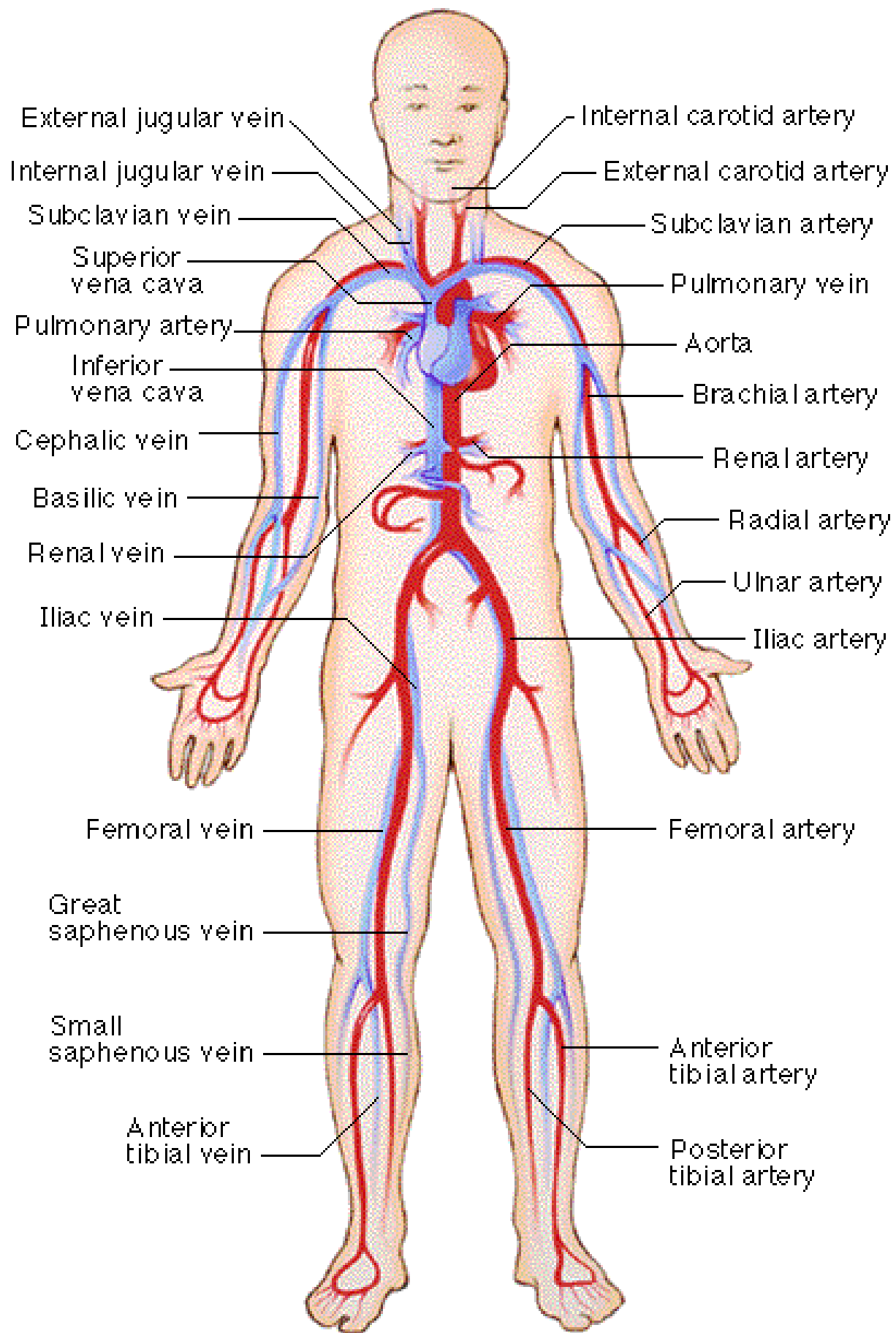
**Trauma** The effect of a violent blow.

## Anatomical Directions

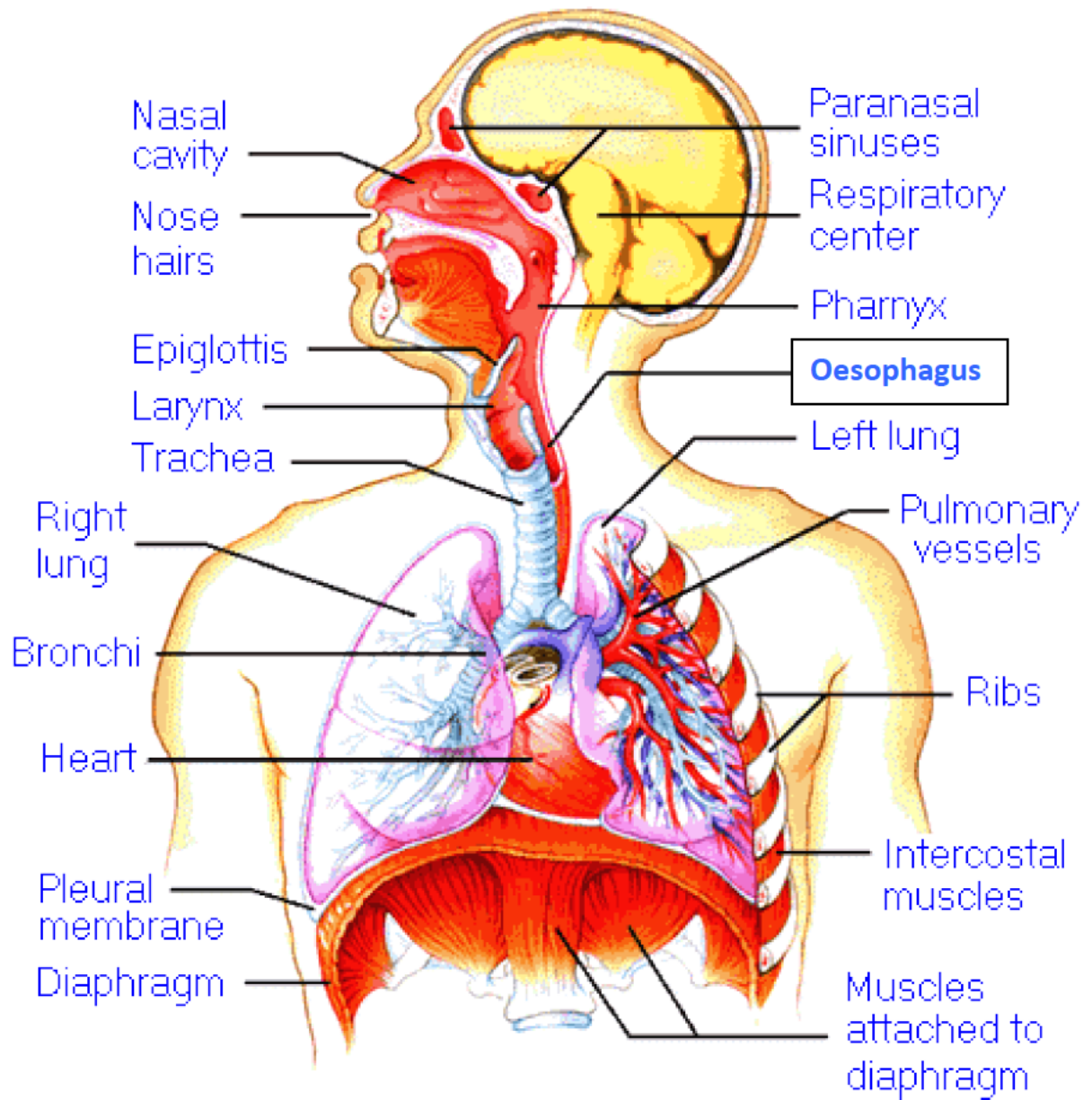


*Anatomical directions*

- A is medial to B
- B is lateral to A
- C is proximal to D
- D is distal to C

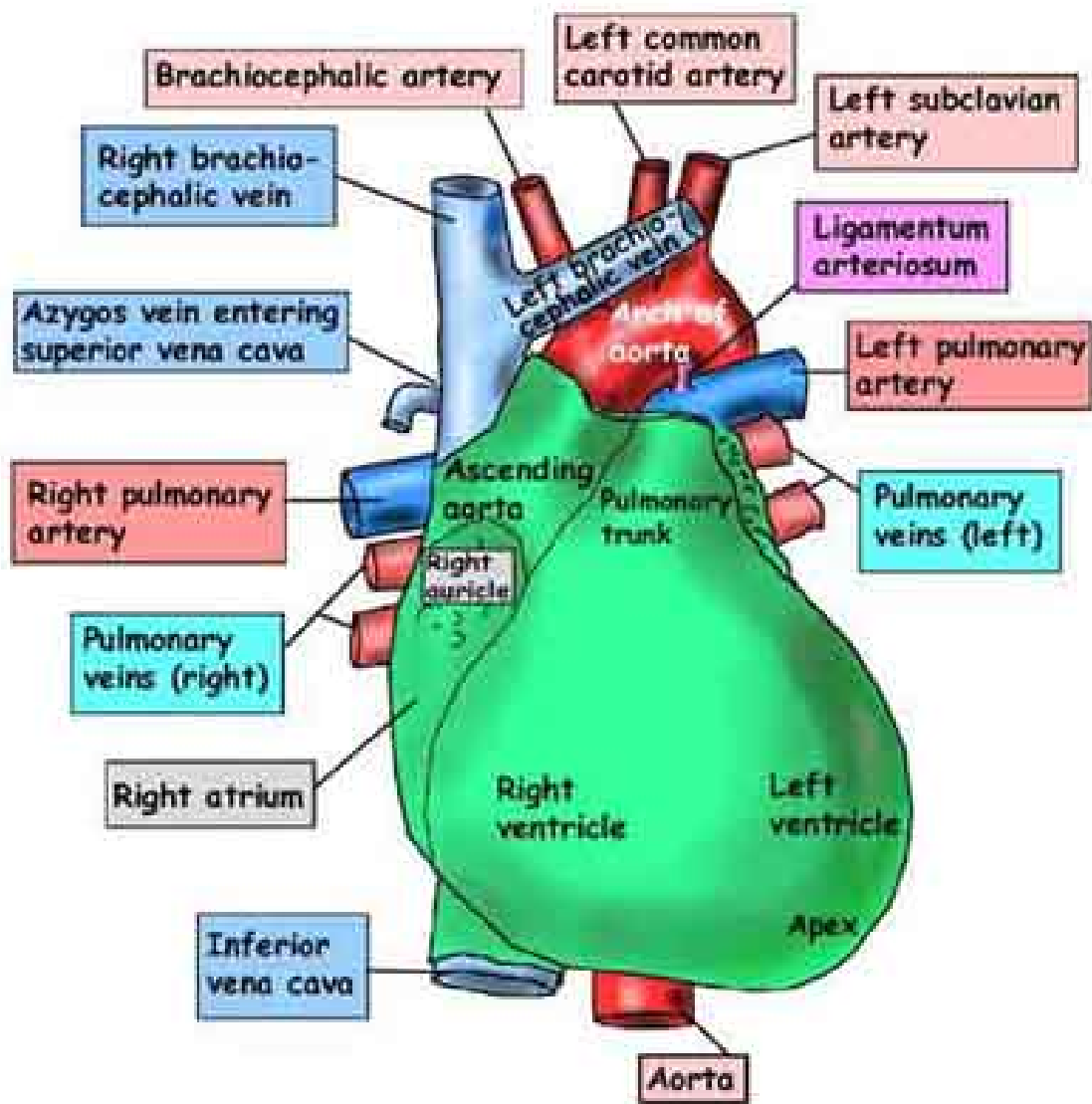


Cross Section of Head and Chest



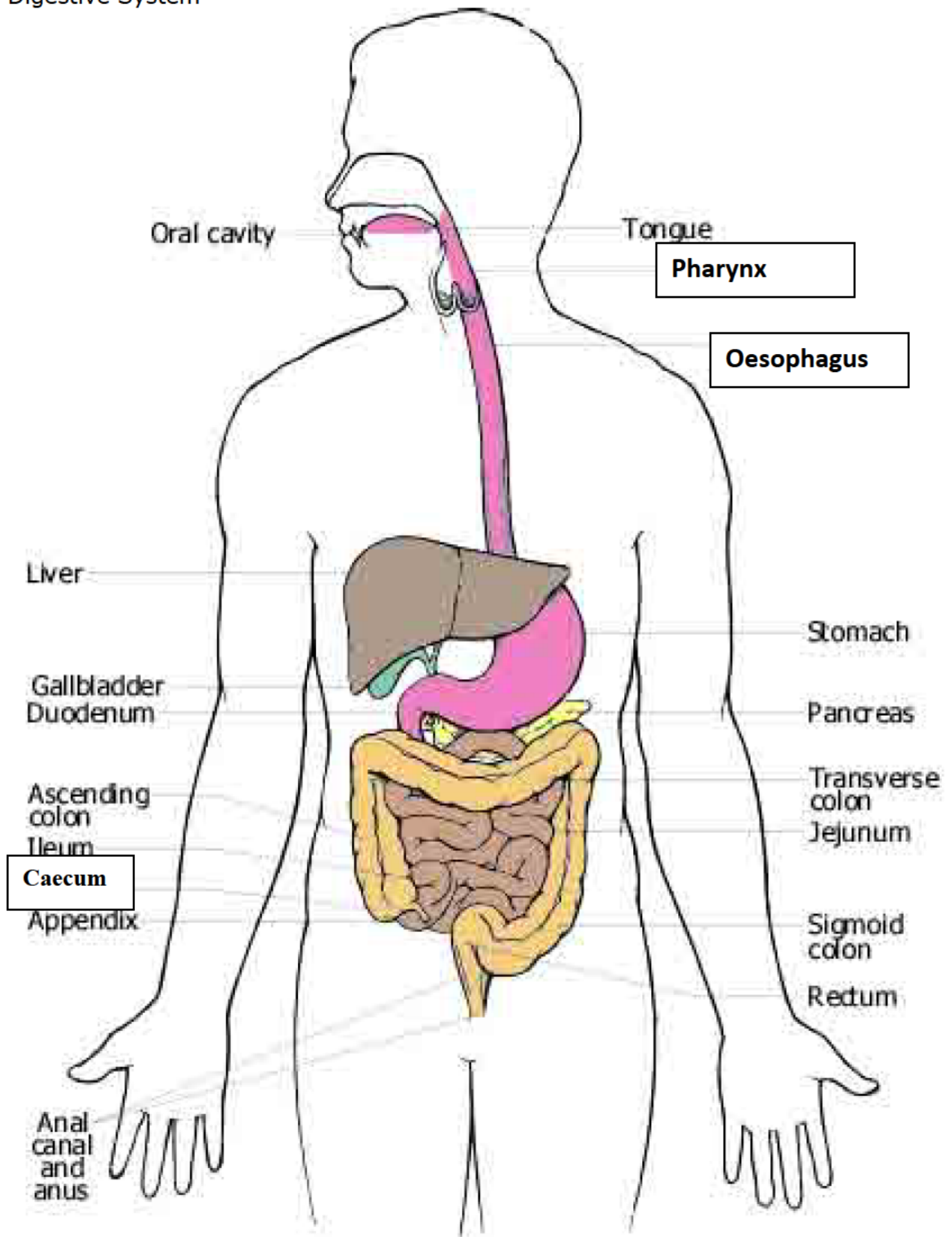
Heart Anterior View

# HEART - ANTERIOR VIEW





# Digestive System



## **Reports of death to the PF**

The Means by Which Deaths are Brought to the Attention of the Appropriate Procurator Fiscal

Death reports, which do not involve suspicious circumstances are received from a number of sources, the principal ones being:

- telephone reports by doctors, usually hospital doctors;
- police reports;
- formal intimation from the Registrar of Births, Deaths and Marriages;
- complaints by relatives;
- telephone intimation by the Medical Referee of the Cremation Society; and
- press and media.

### **Telephone reports by doctors, usually hospital doctors**

The on-call Depute may receive telephone reports out of hours. Unless the circumstances are unusual and require immediate action, the depute should record the details on an F5 (yellow form) and deal with it thereafter during normal office hours. An electronic version ([Form 01A](#)) is available. Deputes should be aware that because of certain ethnic or religious requirements, it may be necessary to deal with such a report immediately, including arranging post mortem examination. Reference should be made to [Section 26](#).

The medical profession is under a responsibility to report to the Procurator Fiscal deaths of patients in their care that are of a type which must be investigated by the Procurator Fiscal. Guidance explaining why and when a death should be reported, has been distributed to the medical profession ([Death and the Procurator Fiscal](#) ). One criterion used by hospital doctors for reporting is that of any death occurring within 24 hours of admission. While this criterion is not recognised by the Procurator Fiscal, it is better that more deaths are reported by hospitals and GPs than less. It is important to stress to local medical personnel that there are categories of deaths that must be reported to the Procurator Fiscal whatever the time of admission.

GPs also telephone often looking for guidance and simple confirmation so that they can issue a death certificate.

Particulars of the death should always be recorded whatever the circumstances. The history is of particular importance, as this will give the background to the death. Having obtained the history, it is important to find out whether or not there is a doctor prepared to certify a cause of death.

In the event of such a death being telephoned to the wrong office, the F5 should be completed in the normal way and then passed immediately by fax (preceded by a telephone call) to the correct office. The reporting doctor should be advised of this and it is particularly important that his/her contact details are noted accurately and passed on.

Certifying a cause of death is the responsibility of a doctor. The Procurator Fiscal has no responsibility whatsoever in relation to that certification. However, a doctor may decide not to issue a certificate giving a cause of death and in that case, the Procurator Fiscal is the only official in a position to take action to obtain a certificate and allow the matter to proceed to disposal of the remains.

Further guidance on this topic is provided at [Section 03](#). A number of options are available to the Procurator Fiscal to obtain a death certificate without reference to a forensic pathologist.

When a certificate has been issued, the principal responsibility of Procurators Fiscal is to decide whether they are satisfied with the cause of death, the circumstances of the death and whether a further investigation is required. That further investigation may include querying the cause of death certified. For practical purposes, therefore, it is necessary to know what type of deaths must be investigated (specified by Crown Office), and to have a basic knowledge of anatomy and medicine.

Having taken details of the death on the F5 and any extension thereof, a decision has to be taken as to what to do next. There are a number of options:

(1) **Take no further action.** This would be the decision if the doctor reporting the death was prepared to issue a Death Certificate certifying the cause of death and the Procurator Fiscal was satisfied, from the history reported, that the death occurred from natural causes and did not require further investigation.

(2) **Consent to a hospital (non-PF) post mortem examination.** Occasionally where the cause of death has not been certified, a hospital doctor will inform the Procurator Fiscal that the hospital has received permission from the relatives to carry out a post mortem examination. The Procurator Fiscal requires no such permission. If the Procurator Fiscal requires a post mortem examination carried out by someone else other than the hospital pathologist, then it is the right of the Procurator Fiscal so to decide. In cases where a hospital post mortem has been agreed and it is obvious that the death comes from natural causes but the cause has not been accurately ascertained, the Procurator Fiscal may agree to a hospital post mortem being carried out and inform the doctor that he or she must be informed of the cause of death once it has been ascertained after post mortem. The circumstances of the death must not be such as to give rise to any ground of suspicion or be one where there may be an issue of death under medical care. On the F5 at "Instructions" should be marked "Hospital P.M. Dr to 'phone with result".

(3) **Carry out further investigations.** Deaths associated with the provision of medical or dental care are to be reported to the Procurator Fiscal for initial enquiry and some of these will require further investigation. See [Section 17](#) of the guidance for fuller consideration of such reports. Most of these deaths represent an unfortunate outcome where every reasonable care has been taken, but they may result from acts of either negligent commission or omission on the part of medical or para-medical staff, or may be associated with criminality. It is the duty of the Fiscal to enquire into deaths which fall into the following categories (which are not to be regarded as exhaustive): deaths which occur unexpectedly having regard to the clinical condition of the deceased prior to his receiving medical care

- deaths which are clinically unexplained;
- deaths seemingly attributable to a therapeutic or diagnostic hazard;
- deaths which are apparently associated with lack of medical care;
- deaths which occur during the actual administration of general or local anaesthetic;
- deaths which may be due to an anaesthetic; deaths caused by the withdrawal of life sustaining treatment to patients in a persistent vegetative state.

"Medical care" includes surgical, anaesthetic, nursing or other kinds of health care. These deaths may be the result of diagnostic procedures (investigations or x-ray procedures) or therapeutic procedures (whether surgical or as a result of medication - oral, parenteral or inhalation administration of drug treatment). This includes deaths possibly linked to defects in medicinal products or medical equipment or apparatus.

Instructions have been given to hospitals, nursing homes and general practitioners that the Procurator Fiscal must be informed without delay when a patient has died in such circumstances. The responsibility for notification lies with the doctor concerned with the care of the patient or the doctor called in at the time of death. The Procurator Fiscal should be notified by telephone or otherwise as soon as possible after the occurrence and as soon as practicable thereafter on Form F89 signed by the doctor. A copy of the [F89 form](#) is also available.

If the deceased died after surgery and the doctor who is reporting the death to the Procurator Fiscal has no knowledge of the surgery preceding the death, the Form F89 should not be completed by the reporting doctor without consultation with the surgeon who conducted the operation or with a senior member of the surgical team to ascertain if any particular matter should be brought to the attention of the Procurator Fiscal.

On receipt of the Form F89, the Procurator Fiscal will consider whether it is appropriate to request the doctor in charge of the case (and where appropriate other doctors who have been involved in the treatment or investigation of the patient) to provide a full written report detailing the circumstances leading up to and surrounding the death.

The death of a person undergoing dental treatment will be reported to the Procurator Fiscal by the dentist and/or anaesthetist concerned.

The F5 should be marked for a police report to be obtained. The doctor telephoning the death should be instructed that a Form F89 has to be completed. Some doctors will know about this but others will need to be told what it is. It may be of benefit to ask the doctor concerned to fax a copy of the F89 to the Procurator Fiscal to ensure that the form is completed timeously. The F89 must be forwarded to the pathologist instructed by the Procurator Fiscal to carry out a post mortem examination. The form will give the pathologist information about any procedures that have been carried out. The pathologist looks into all medical aspects of the death and acts as a Specialist Investigator on behalf of the Procurator Fiscal. The pathologist reports the cause of death and other information and also gives opinions on the medical procedure etc. See [Section 04](#). VIA may be able to assist in contact with the nearest relative and reference should be made to [Section 26](#).

**(4) Instruct a police report.** Where the cause of death has not been ascertained or there are further enquiries required, a Police report should be instructed.

The F5 is passed to the Deaths Desk/Office Manager as soon as possible on the first working day after the death is reported. There should rarely be any reason for attempting to make arrangements earlier but consideration should be given to religious and racial aspects. See [Section 26](#). Details will be taken from the

form and recorded and arrangements made for whatever instruction has to be carried out. Practical difficulties may arise in cases where the deceased lived in another jurisdiction within Scotland. In such cases, it is often better first of all to telephone the other Procurator Fiscal and discuss who has jurisdiction. If the other Procurator Fiscal does not, it is better to instruct Police in the Area in which the death occurred to prepare the report. If the deceased comes from abroad or from England, the police will carry out the same sort of enquiry.

## **Police Reports**

Jurisdiction lies with the Area Procurator Fiscal (and the District Procurator Fiscal within that Area) in whose Area the accident or other incident which caused the death took place and reports should be submitted to the relevant District Procurator Fiscal in the first instance. This will not necessarily be the District where the death occurred. Where a District Procurator Fiscal has any doubts as to jurisdiction, the Procurator Fiscal shall consult with the Area Procurator Fiscal immediately.

All police reports are e-mailed and currently have to be routed to SOS and printed. Refer to [Deaths Reports Task Instructions](#) for details. The report should contain:

1. Personal details of deceased.
2. Details of nearest relative and contact points.
3. Any potential problems.
4. Medical history and details of the deceased's GP.
5. Summary of the circumstances.
6. Details of deceased, family, religion and nearest relative.
7. Family members and persons who need to be contacted.
8. Production schedule.
9. Opinion as to whether the death is suicide.

An experienced legal member of staff, who is competent in making decisions in death reports, must consider each police report promptly and decide whether or not further investigation is required. The case should only be marked for no action (see [Deaths Reports Task Instructions](#) for precise marking and subsequent admin actions) if a doctor has certified a cause of death, and the Procurator Fiscal is satisfied that the cause of death and the circumstances of death do not require further investigation. As a general rule, if a medical practitioner is willing to grant a death certificate, that should be accepted unless there is some compelling reason not to accept it.

Where the circumstances do not indicate a need for further investigation but where no cause of death has been certified, further actions may be required and these are set out in [Section 03](#).

## **Religious and related issues**

See [Section 26](#). Any failure by the police to identify a religious or cultural issue must be brought to the attention of the Procurator Fiscal without delay.  
Registrar's intimation

See [Section 38](#). Where a death is registered and that death falls into a category which requires to be brought to the attention of the Procurator Fiscal, the

Registrar will send an intimation containing the deceased's details, date of death and certified cause of death to the local District Procurator Fiscal. Occasionally, the District Procurator Fiscal will not have received any previous notice of the death, either because it has not been reported or it has been reported to a different Procurator Fiscal. Area Procurator Fiscals should appoint a co-ordinator to deal with this issue.

On most occasions, it will be apparent that no further investigation is required and sending a F49C to the Registrar can close the matter.

In the event that some further inquiry is required, it should be ascertained if the death is being dealt with elsewhere (by searching PROMIS) and if so, the intimation should be sent to the appropriate office. Where no report appears to have been received and there is a possibility of further investigations being required, the police should be instructed by telephone, confirmed in writing, to inquire and submit a police report promptly.

### **Contact by family or nearest relative**

This contact usually occurs some months or years after the event and is often combined with Press and media interest. It is recommended that the District Procurator Fiscal personally meets with the family to find out the issues before instigating further inquiries, if they are required.

### **Enquiry by the medical referee**

Where two medical practitioners have issued cremation certificates, it is for the medical referee of the appropriate cremation society to decide whether or not cremation shall take place. Occasionally, the referee will contact the Procurator Fiscal to discuss the circumstances of a death that has not been reported to the Procurator Fiscal. The Procurator Fiscal may inform the referee that there is no reason for further investigation or may seek further information. That information may be obtained by telephoning the doctor issuing the certificate or by instructing a police report or both.

### **Media and Press interest**

Occasionally, the first indication that a death may require initial inquiry is through a media.

### **No Criminality or Negligence**

### **Investigating any Natural Causes Death Where There Are no Elements of Criminality or Negligence**

It is the duty of Procurators Fiscal, in the exercise of their function at common law and under statute, to enquire into certain categories of death. This is necessary in order to minimise the risk of undetected homicide or other crime and in the public interest, to eradicate dangers to health and life, to allay public anxiety and to ensure, so far as reasonably possible, that full and accurate statistics are compiled. It is also necessary to secure and preserve evidence relevant to the rights of interested parties which may vary with the circumstances of the death.

Certifying a cause of death is the responsibility of a doctor. However, a doctor may decide not to issue a certificate giving a cause of death, and the Procurator Fiscal is the only official in a position to take action to ascertain by post mortem examination an accurate cause of death. This is part of the duty to ensure, so far as reasonably possible, that full and accurate statistics are compiled. It is also part of the duty to preserve possible evidence of cause of death in a civil claim for damages e.g. in industrial disease cases. These duties have to be balanced with the duty to family and nearest relative to respect their wishes as to what is done with the remains of the deceased.

Where the circumstances do not indicate a need for further investigation but no cause of death has been certified, initial attempts should be made to have death certified by a doctor before referring the death to a pathologist. As a general rule, if a medical practitioner is willing to grant a death certificate it should be accepted unless there is a compelling reason not to accept it. Hospital doctors are often happy to issue a death certificate after a brief discussion. A full history must be taken and recorded to ensure that a death which requires further investigation is not missed.

GPs are increasingly less happy to issue certificates, but many will do so after a telephone discussion with the Procurator Fiscal. In such cases, arrangements should be made to speak with the deceased's medical practitioner as the doctor declaring death may have no personal knowledge of the deceased's medical history.

If a police surgeon is available and local arrangements allow for it, the police should be instructed to have the police surgeon view the body and certify if possible. The police may already have arranged this themselves and any certificate granted by a police surgeon should normally be accepted.

A doctor may have issued a death certificate which satisfies the Procurator Fiscal's requirements but there is still a need for further investigation (for example where a fall has preceded death in an elderly person). In such cases, arrangements should be made for immediate release of the body for disposal (see [Section 07](#)) and instructions to initiate the further investigation recorded. If at this stage it is clear that a FAI is mandatory (and is not likely to be preceded by a prosecution) that should be recorded in SOS [Deaths Reports Task Instructions](#) and immediate steps taken to set up and prepare for the FAI.

If the cause of death has not been certified, the first step is to refer the death to a pathologist. Some pathologists may provide a "view and grant" facility, but it is a matter for the professional judgement of the pathologist to decide what level of post mortem examination is required. In many cases the cause of death will be evident without an invasive post mortem examination and in such a situation it may be appropriate to indicate to the pathologist that it is open to "view and grant". For the purposes of Procurator Fiscal procedures, such an action is considered to be "further investigation" as it includes the option for the pathologist to exercise professional judgement and move to full post mortem examination without further reference to the Procurator Fiscal. See [Deaths Reports Task Instructions](#). The pathologist would be expected to provide a summary report.

See [Section 04](#) regarding instruction of post mortem examination.

Undoubtedly, the more accurate method of determining a cause of death is by post mortem examination by an experienced pathologist. In many cases however, a reasonable degree of accuracy can be obtained by external examination and consideration of the deceased's history. In cases which otherwise would not demonstrate grounds for further action by the Procurator Fiscal, a number of options are available to obtain a death certificate without resort to post mortem examination.

Occasionally where the cause of death has not been certified, a hospital doctor will inform the Procurator Fiscal that the hospital has received permission from the relatives to carry out a post mortem examination. In cases where a hospital post mortem has been agreed and it is obvious that the death comes from natural causes but the cause has not been accurately ascertained, the Procurator Fiscal may consent to a hospital post mortem examination and inform the doctor that the Procurator Fiscal must be informed of the cause of death once it has been ascertained after the post mortem. In such a case, the body is not under the control of the Procurator Fiscal and may be released for disposal by the hospital.

### **Post Mortem Examination**

A post mortem examination will not always be necessary. In many cases the Procurator Fiscal will be advised of the death because there is no doctor prepared to issue a death certificate. If the Procurator Fiscal is satisfied that the death is due to natural causes and there are no elements of criminality or negligence, he or she will invite the deceased's own doctor or, if the deceased died in hospital, the doctor concerned, to provide a certificate as to the cause of death.

### **Hospital Post Mortem Examination**

The Procurator Fiscal is sometimes (now very rarely) asked by doctors, especially hospital doctors, to permit a post mortem examination in the interest of medical research or for some other medical reason, although the cause or primary cause of death is known. In cases where the Procurator Fiscal does not require a post mortem examination, he or she should confirm this to the doctor and indicate that there is no objection to a hospital post mortem examination, provided it is clear that the post mortem examination is not carried out at the Procurator Fiscal's instance and that the consent of the relatives should be obtained. The Procurator Fiscal should further inform the doctor that if the post mortem examination reveals suspicion, it should be halted and the Procurator Fiscal informed immediately. The results of post mortem examinations conducted under an arrangement of this kind must always be reported to Procurators Fiscal.

### **Police Medical Officer**

If no doctor is prepared to provide a certificate, the Procurator Fiscal may invite a suitably qualified police medical officer to view the body of the deceased and provide a certificate, after consultation.

### **Referral to a Pathologist**



If no doctor has issued a certificate, the death may be referred to a pathologist to carry out a one-doctor post mortem examination. In cases of apparently natural causes, where there are no other reasons for instructing an invasive post mortem examination, it may be appropriate to indicate to the pathologist that he or she may "view and grant". This involves an experienced pathologist externally examining the body of the deceased and considering the deceased's history, including the police report into the events immediately leading to death. It is a matter for the professional judgement of the pathologist whether to issue a death certificate in this way and the option must be left open to proceed to full one doctor post mortem examination.

In deciding whether to instruct a post mortem examination, the Procurator Fiscal will need to consider any potential hazard, such as the danger of infection, to those who require to be present at the post mortem examination. In cases where the deceased is considered to be in a high-risk category as a possible carrier of the HIV or Hepatitis viruses, an initial blood screen for the presence of these viruses should be ordered. Where there is a high risk of such infection a post mortem examination should only be instructed if there is no alternative. It may be sufficient to have an external examination of the body of the deceased by a pathologist supplemented by toxicological analysis of blood and/or tissue and of the contents of any relevant containers found at the scene or elsewhere, for example, hypodermic syringes. Other available evidence as to the cause or circumstances of the death will be relevant. In deaths where there is a possibility of criminal proceedings and it will be necessary to proceed with a post mortem examination; special precautions against infection should be taken and only essential personnel should be in attendance.

Where a pathologist finds unexpected difficulties or grounds of suspicion while conducting a one-doctor post mortem examination, he or she should suspend the post mortem examination and report immediately to the Procurator Fiscal in order that a second pathologist can be instructed.

A two-doctor post mortem examination should only be instructed where there are grounds for believing that a criminal prosecution, on a charge, which requires that the fact and cause of death be proved by corroborated evidence, will follow.

The introduction of new Road Traffic offences relating to causing death by driving, means that (unless the only driver of a motor vehicle involved in the incident is the deceased) in every fatal road traffic incident, criminal proceedings in which the cause of death is an essential fact will be a realistic possibility. It is recognised that requiring a two doctor post mortem examination in every such case would not always be necessary. [Section 22 of the Manual](#) still provides that in any cases of apparent culpable homicide or contravention of Section 1 or 3A of the Road Traffic Act 1988 a two doctor post mortem examination should be instructed. However, it is now provided that where there is no realistic possibility of a prosecution for one of those three offences (and prosecution for section 2B or 3ZB may be appropriate) the Procurator Fiscal may consider whether, in the circumstances, a one doctor post mortem examination would be sufficient. In coming to this decision the Procurator Fiscal should consider whether there is sufficient corroborative evidence of the cause of death from the surrounding facts and circumstances. A decision to instruct a one doctor post mortem examination should be taken only with the authority of the District, Divisional or Area Procurator Fiscal.

## **Selection of Pathologists**

The Procurator Fiscal will select and instruct the pathologists to perform the post mortem examination. He or she may be advised by these pathologists as to the need for further investigation by way of forensic science but the decision on the extent of such investigation and the choice of experts should be made by the Procurator Fiscal in the light of all the known circumstances of the case. Forensic Science services may be provided by a police laboratory, (in which case the need to select particular officers is unlikely to arise), by hospital or university staff, or by an Inspector from the Health and Safety Executive.

In some cases the Procurator Fiscal will require to consider whether a pathologist with particular skill should be called in. In cases of head injury it might be desirable to instruct a neuropathologist. It may be desirable to bring in experts who are not pathologists. For example, in cases of sexual assault it might be appropriate to consider whether an expert in obstetrics or gynaecology should be associated with the post mortem examination. In the case of the death of an infant or young child, the Procurator Fiscal should ensure that a paediatric pathologist is instructed where practicable. The paediatric pathologist, in addition to requiring any hospital admission records and the GP records, will also require the obstetric notes if these are relevant.

## **Toxicology**

Instruction of toxicology should take place in accordance with [Section 09](#).

## **Contact with the Nearest Relative**

See [Section 26](#) for general instructions concerning for contact with the nearest relative. It is not considered either necessary or practicable to contact the nearest relative prior to every post mortem examination, provided that the police report indicates clearly that they have no objection to a post mortem examination. The Procurator Fiscal should confirm that the nearest relatives do not object to a post mortem examination and that the nature and purpose of the post mortem examination has been explained to them. The police report should indicate whether a Family Liaison Officer has been appointed and he or she can often provide valuable assistance.

If there is an objection from the nearest relative, careful consideration must be given to whether the post mortem examination is essential. If it is considered essential to instruct a post mortem examination, the nearest relative must be contacted and the situation explained to them. Wherever possible this should be done directly and not through the police, in order to avoid the risk of misunderstanding. Sensitivity will be essential but it has to be remembered that the Procurator Fiscal has a duty to investigate the death in the public interest and has the right to instruct a post mortem despite objections from the nearest relative. Any contact with the nearest relative must be noted.

Every reasonable effort should be made to identify any religious or cultural issues associated with the death and to accommodate the wishes of the nearest relative, where this is consistent with a proper investigation.

## **Issues Surrounding Identification of a Deceased in potentially Criminal Cases**

In any case where criminal proceedings in which the fact and cause of death are crucial, full legal identification is required. Examples include:

- Any potentially homicidal death;
- Any death that may result in a prosecution under sections 1 or 3A (but not section 3) of the Road Traffic Act 1988.

Identification of the body in other deaths is dealt with at [Section 06](#) of the manual.

Where the identity of the body is known and there is a possibility of criminal proceedings, there must be corroborated evidence of identification of the body provided to the pathologists so that there is proper linkage with the post mortem findings. This may be done by two relatives or acquaintances identifying the body to the pathologists directly. However, to avoid additional distress and inconvenience to relatives or acquaintances of the deceased, the identification will more often involve identification to two police officers by two relatives or acquaintances followed by identification by these officers to the pathologists. There must also be corroborated evidence usually from two police officers to prove that the body to be examined is the body which was at the locus, e.g. in a road death where the body may be removed by ambulance at an early stage. In certain areas of Scotland, it may be the case that police officers who attend at the scene of a suspicious death can identify the deceased. If both officers can identify the deceased, this will mean that neither relatives nor acquaintances of the deceased will be required to make any kind of identification of the deceased. This is unlikely to be possible in large towns or cities where the deceased will often not be known to all the police officers who attend at the scene.

In cases where the remains of the deceased have been burned, mutilated or have decomposed, other means of identification may well require to be used, such as the services of a forensic odontologist, fingerprint identification or in appropriate cases identification by means of DNA analysis.

There will often be aids to identification (although not in themselves conclusive) such as distinctive tattoos on the body, if visible and non-decomposed, personal possessions found within the clothing, or possibly a distinctive piece of jewellery such as a ring. It is emphasised that factors such as personal possessions and tattoos etc, are evidence of identity but are not conclusive. They may provide corroboration when other more compelling evidence is present.

A further means of identification may be evidence of past medical intervention, where the pathologist may be able to confirm identification of the body from signs of, for example, surgical intervention or previous radiographic records. It is understood that all flying personnel in the US Air force have X rays taken of their frontal sinuses, as their characteristics are such that it is a very effective means of identification even where the remains of the deceased have been burned. The foregoing instructions must be complied with notwithstanding the provisions of section 281 of the Criminal Procedure (Scotland) Act 1995.

## **Publicity**

In the case of any death where there is any suspicion of criminality, the police will consult the Procurator Fiscal before advertising in the press or other public medium. In deciding whether to authorise such publicity, the Procurator Fiscal

will have regard to the conflicting considerations that there is a need to secure identification and the risk that publicity may weaken evidence in subsequent criminal proceedings. In the event of any doubt or difficulty, the Procurator Fiscal will report to Crown Office for the instructions of Crown Counsel.

### **Issues Surrounding Identification of a Deceased in Non-Criminal Cases**

**In cases, which are unlikely to give rise to criminal proceedings, or in which there is likely to be proceedings in relation to a charge where proof of the fact and cause of death is not essential or relevant, there is less need for the body to be formally identified to the pathologist. The identity of the deceased in such a death only needs to be established on the balance of probability. (See [Section 05](#) of the manual for guidance on deaths where there is likely to be criminal proceedings).**

This provides an opportunity for ensuring, in appropriate cases, that the nearest relatives of the deceased are not put through the needless or excessive emotional trauma of having to identify the deceased, particularly if the body is mutilated, burnt or decomposed.

There will be instances where the body of the deceased has been found by a friend or nearest relative, in which case initial identification can be made to the police officer in attendance.

As long as there is an unbroken link in the chain of identification, there would be no need for friends or nearest relative, and indeed police officers, to attend the mortuary. Identification could be obtained by the police officer identifying the body to the undertaker who could in turn identify the body to the mortuary attendant who could in turn identify the body to the pathologist. Alternatively when a police officer accompanies the body to the mortuary, the police officer can identify the body to the mortuary attendant. If the police officer attends the autopsy for any reason, the police officer can then directly identify the body of the deceased to the pathologist.

Such means of identification can be particularly helpful in rural areas where police officers or other witnesses might require to travel considerable distances, involving time and inconvenience, to attend mortuaries, particularly if the sole purpose is for that of identification.

These particulars should, where necessary, be reinforced with the attachment of nametags and the accurate completion of mortuary records. In many instances this should avoid the need to require nearest relatives or friends of the deceased to attend at the mortuary for the sole purpose of formal identification.

Where the death has occurred in a hospital, it is customary for the nursing staff that prepare and lay out the body to attach an identification tag to the deceased, unless the deceased was already an in-patient, in which case such an identification would have been attached on admission. It will be necessary for the undertaker or mortuary technician to check carefully the accuracy of the identification tag when the body is transferred to the mortuary. If any irregularity is found, such as the body bearing a name on the tag that does not match with the information given, or no tag is attached to it, the police should arrange for the body to be formally identified. This would require that mortuary attendants and undertakers are aware that they should immediately bring such

discrepancies to the notice of the Procurator Fiscal the police or indeed the pathologist. This may require, if such arrangements are not already in place, Procurators Fiscal to issue clear guidelines and instructions to local police, mortuary staff and undertakers.

The issue of identification, in rural areas, can be eased by the fact that the police officers involved in a particular case may know the deceased personally or professionally. In larger towns or cities this is unlikely and the identification process will require more formal procedures, such as the chain of identification going from the police officer or friend/nearest relative at the scene of the death all the way to the pathologist.

Wherever possible, steps should be taken to ensure that relatives of the deceased are not put through needless or excessive emotional trauma, especially if the body is mutilated, burnt or decomposed in which case circumstantial evidence of identification or the services of a forensic odontologist may be required. Where visual identification is not possible, dental records, DNA, or fingerprint analysis may provide the necessary evidence. Provided the death is clearly not going to result in criminal proceedings, scientific means of identification (e.g. DNA or dental examination) should not be considered until all other possible means have been examined and excluded.

Mutilation by creatures, whether on land or in water, is not uncommon. In such instances, identification by fingerprint will not be available. Accordingly circumstantial evidence of identification e.g. including the clothing, nametags on the clothing, and any personal possessions found in the clothing of the deceased may assist in identification. In some cases there may be a particular tattoo, which is still visible, and unusual tattoos can often assist in identification. The presence on the body of distinctive jewellery may also be of assistance.

Consideration should also be given to the question of identification in deaths likely to result in a Fatal Accident Inquiry, where there is no possibility of criminal proceedings. In terms of Section 6(2) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, it is stated that the Sheriff shall be entitled to be satisfied that any circumstances referred to in sub-section 1 of said Act have been established by evidence, notwithstanding that that evidence is not corroborated. This presumably applies also to the identification of the accused. Accordingly, other than in very exceptional circumstances, it will be sufficient to identify such a deceased by one witness alone or by one single unbroken chain of evidence.

### **Video Identification**

In remote and rural jurisdictions the Procurator Fiscal may be asked to consent to the use of video equipment for the purposes of identification of a dead body. This is permissible where there are no apparent suspicious circumstances surrounding the death. When this procedure is to be used it will be necessary for an initial identification to be made to the inquiring Police Officer by suitable relative/friends of the deceased. Following this a video identification of the body will take place involving the inquiring Police Officer. This will normally be done at a Police Station or Police Mortuary. Each identification will be recorded by the police photographer who will ensure that both video and still photographs are made of the locus and the body in situ. The video cassette will then be marked with the relevant police number and the name of the deceased before being

placed in an envelope within the coffin shell, together with a copy of the Death Report and the completed Police Identification of Deceased Person Form. The coffin shell will then be sealed subsequent to the video identification taking place. This is important in order to demonstrate that the body has not been contaminated in any way and that the chain of identification has not been broken between the initial seizure of the body and the post mortem examination.

The video cassette used in the identification will be viewed by the Pathologist and will be returned to the Police by the Pathologist after the post mortem examination has taken place. It can only be reused after consultation with the Procurator Fiscal. To ensure the timeous return of each cassette, a prepared stamped and addressed envelope should be included in the package sent to the Pathologist at the time of initial identification. A register will be kept by the Police detailing the movements of these video cassettes to and from the Pathologist.

### **Photographing Bodies**

The following is a Scottish Office Circular issued to Chief Constables: "When dead bodies are found and are not identified the deceased's fingerprints should be taken and if the features are not distorted or decomposed, arrangements should be made without delay to obtain photographs of the body with a view to future identification. If practicable the body should be photographed in the clothes in which it was found, so far as possible, in a life-like and natural position. In cases of drowning or cases where the body is likely to decompose quickly, photographs should be taken immediately without awaiting the result of any enquiry as to identification. In each case two photographs should be taken, one full face and one profile. As regards publicity it is realised that the steps likely to prove most effective in securing identification will vary in different cases and the matter is therefore one in which Chief Constables should exercise their own discretion. It is desirable that descriptions of unidentified dead bodies should be carefully prepared and should give full and accurate particulars. Besides supplying information to the general press consideration should be given to facilitating identification by issuing "informations" accompanied by photographs to neighbouring forces. The foregoing arrangements are not, of course, intended in any way to supersede or curtail such other steps as are customarily taken in connection with the identification of unknown bodies."

Identification by photograph alone should not be relied upon to provide evidence of the deceased's identity. Such identification should be verified, if possible, by other independent evidence.

### **Retention and Disposal of Bodies**

#### **Control of a dead body**

The Procurator Fiscal has a right and a duty to control the disposal of bodies, which have died within their jurisdiction while they make enquiries into the death. Depending upon the circumstances, the Procurator Fiscal may decide to leave the body where the death occurred, e.g. at home or in a hospital, or to have the body removed to a police or hospital mortuary, or to have the body removed to one of the specially designated mortuaries. In every case the

Procurator Fiscal will require to decide whether to accept a medical certificate as to the cause of death and release the body, or whether a post mortem examination is necessary.

In all cases the Procurator Fiscal should send the nearest relative the general information leaflet, "[The Role of the Procurator Fiscal in the Investigation of Deaths](#)". It is designed to provide basic, essential information to families in the immediate period following a sudden death. It recognises that, at this stage in bereavement, many relatives do not want to receive detailed information but that it is important to provide a contact point so that further information can be sought by those who require it at a time when they are able to deal with it. This leaflet does refer to the possibility of a post mortem examination being required but stresses that just because the Procurator Fiscal is involved does not mean to say that a post mortem examination will be needed.

Where a post mortem examination is instructed, arrangements should be made to ensure that the nearest relatives are notified. To assist in such communication, a brief information leaflet about post mortem examinations has been prepared. A copy of the leaflet is also available on the COPFS website. This leaflet is designed to be given to relatives when an invasive post mortem examination will take place or has taken place and does discuss organ and tissue retention. It must not be sent if there is not to be an invasive post mortem examination.

The Procurator Fiscal should obtain information about the religious or cultural requirements applicable to the deceased. Every effort should be made to facilitate the observance of such requirements - unless to do so would prejudice the enquiry. Further guidance is to be found in [Section 26](#)

### **Release of body**

In all cases where the Procurator Fiscal has enquired into a death, it should be remembered that the nearest relative will be anxious to complete the funeral arrangements and that the body should be released as soon as possible after enquiries are completed. In cases where the cause of death cannot be determined until the results of a toxicological or other scientific test are known, Procurators Fiscal should consider whether the retention of sufficient blood/tissue or organs to allow the tests to be completed and the cause of death properly determined will enable the body to be released. Where criminal proceedings are a possibility, the Procurator Fiscal should ensure that sufficient samples are retained and are properly stored to allow independent analysis on behalf of any eventual suspect. The procedures and instruction in relation to organ retention may require to be followed with regard to liaison with the deceased's family and the provision of information.

When releasing a body the Procurator Fiscal will require to decide whether cremation may take place. If so the Procurator Fiscal will issue Form E1 as evidence of consent for cremation. As cremation results in the complete destruction of all evidence available from the body, there may be circumstances, usually in cases of murder, where the Procurator Fiscal cannot allow the body to be cremated.

Procurators Fiscal must ensure that the arrangements for the release of dead bodies are known to the police and mortuary authorities and undertakers within

their districts. Generally it will be appropriate for the Procurator Fiscal to release the body by means of a written authorisation provided to the undertaker or given to a member of the deceased's family. In exceptional circumstances verbal authority may be given. In such circumstances the Procurator Fiscal must ensure that the communication is made to a responsible and identifiable person and that an appropriate entry is made in the case papers. Where the body is being removed from Scotland, e.g. to England or Wales for disposal, the Procurator Fiscal should draw the attention of the undertaker or other person concerned to the need to have the death registered in Scotland to avoid complications for relatives in having the body buried or cremated in England or Wales. A style letter is available ([Form 06A](#)).

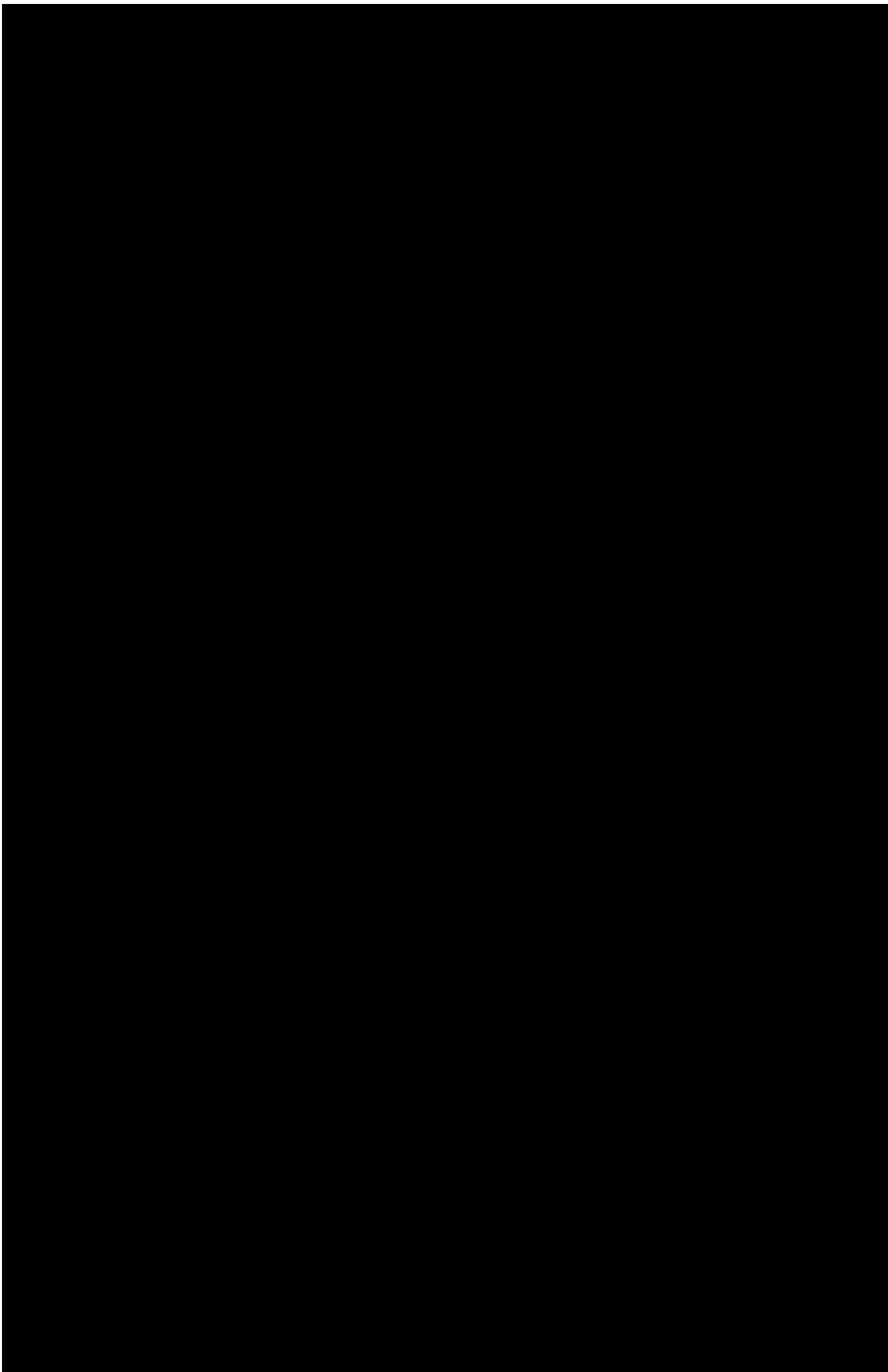
### **Release of body in cases of homicide**

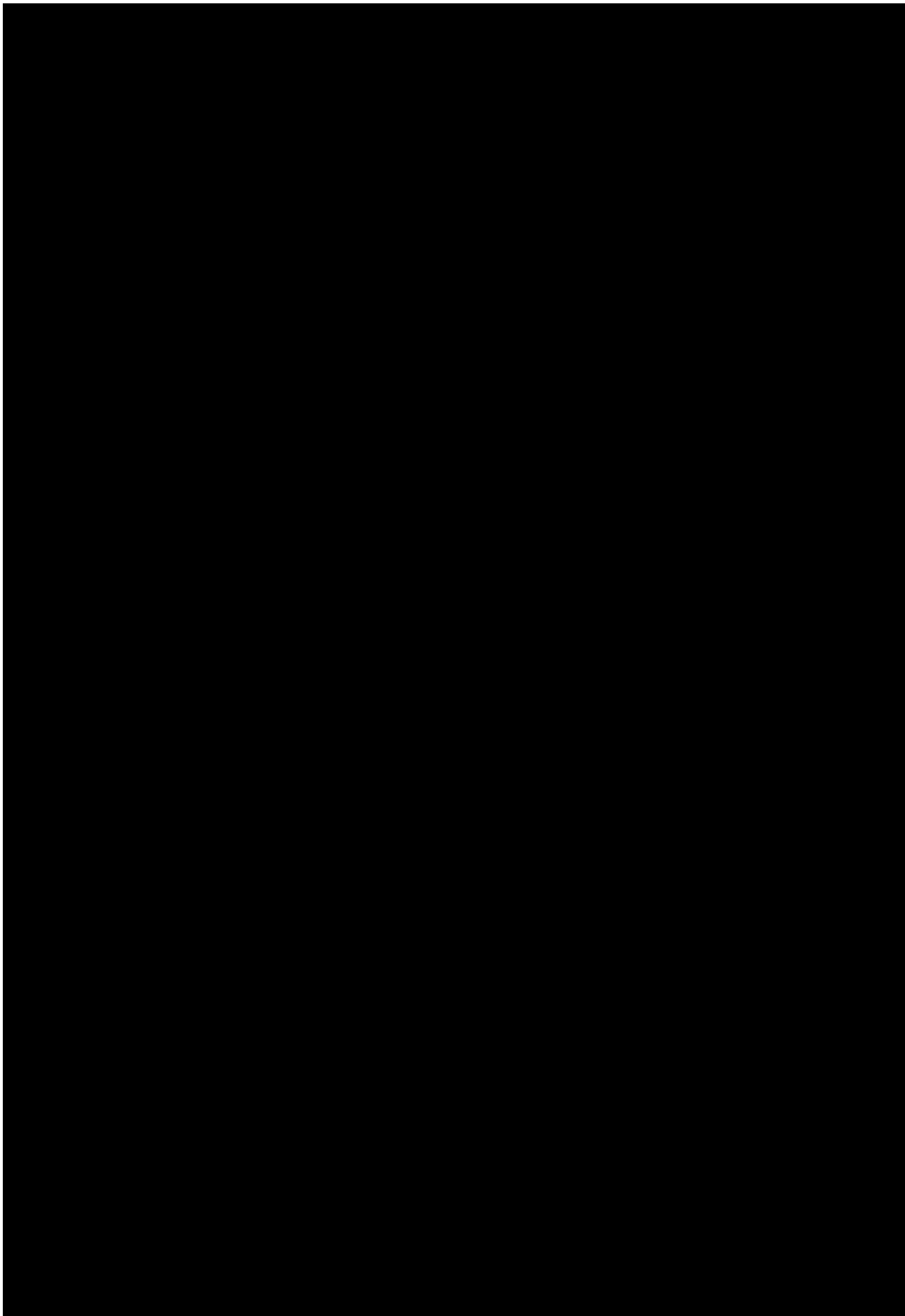
Where a person has been charged on petition with murder, a report should be sent to Crown Office within three days of committal for further examination. Where criminal proceedings have commenced, the Procurator Fiscal should ascertain from the defence whether they wish to instruct a post mortem examination. The body should not be released until the defence indicate, in writing, that they do not require a defence post mortem or that they have completed their post mortem examination. Where the pathologist intimates that the deceased's brain should be removed for fixing, the defence should, where possible, be asked if they want to arrange for a defence pathologist to be present when the brain is removed.

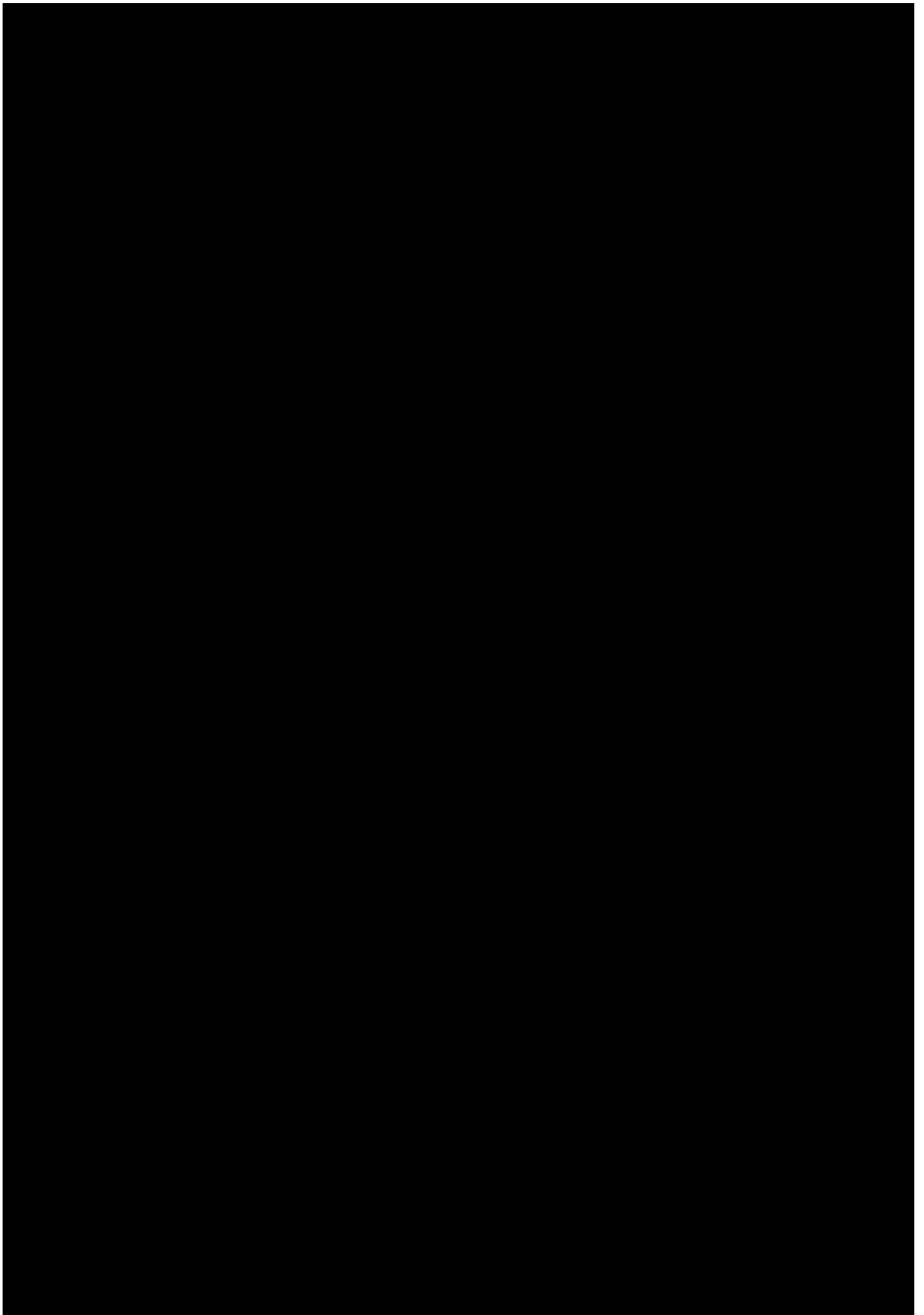
Where all potential suspects are in custody and the defence agree to the release of the body, again in writing, there is no need to refer to Crown Counsel the question of the release of the body for burial or cremation. If the defence decline to agree to the release of the body or in the event of any other difficulty, Crown Counsel's instructions should be obtained prior to the release of the body. In homicide cases where criminal proceedings have not commenced or where not all potential suspects are in custody, difficult questions may arise as to the release of the body. Crown Counsel's instructions should be sought in such cases as soon as possible. In any event Procurators Fiscal should report all such cases to Crown Office within two weeks of the date of the post mortem examination with a copy of the PM report, or draft if available. The report should provide details of the position of outstanding suspects, the views of the family of the deceased on the release of the body, any known or anticipated problems connected with the release of the body, and the Procurator Fiscal's own recommendations on the release of the body. If the body is not released, the Procurator Fiscal should review the case on a regular basis. The need to retain a body for longer than one month from the date of the post mortem examination should occur only in the most exceptional of cases. Should such a need arise, Procurators Fiscal should report the circumstances fully to Crown Counsel for their approval and should ensure that the nearest relatives are informed of the reasons for the continued retention of the body. A style report is available ([Form 06B](#))

Where the death is suspicious but it is not clear whether there has been a homicide and no suspect is in custody, this should also be reported to Crown Office two weeks after the date of the post mortem examination. The case should be reviewed on a regular basis to ensure the return of the body to the nearest relative as soon as possible, consistent with the proper investigation of the death.









## **Retention of Organs and Samples 08**

### **[Process for dealing with Organ Retention - Reminder and Flowchart](#)**

#### **Introduction**

Organ retention is a highly sensitive subject and the Procurator Fiscal must take the greatest care when dealing with it. VIA can assist in communications with relatives and certain deaths must be referred to VIA. See [Section 26](#).

Although organ retention is comparatively uncommon in practice, there are several possible situations where it may be necessary to retain organs or tissue for additional expert examination. Examples might include the retention of the deceased's liver in a suspected poisoning or drug abuse inquiry or the retention of lung tissue in a case of industrial disease. Organ retention is most commonly encountered in the field of sudden unexplained death in infancy (SIDS/SUDI). In the substantial majority of such deaths it will be necessary for the child's brain to be retained for neuropathology.

A distinction must be drawn between the retention of whole organs and the retention of tissue samples, blood specimens etc. This distinction relates to both the initial liaison with the nearest relative and the ultimate disposal of the retained material.

In criminal cases where it is necessary to make retained material available to the accused for examination, for health reasons, body organs, stomach contents, blood and saliva samples and swabs stained with body fluid will be retained by the examiner for a period of 21 days only after the service on an accused person or his or her solicitor of a letter informing him that the item will be disposed of and may be destroyed unless intimation is received that the defence wish to have the item examined or they request an extension of the 21 day period.

#### **Retention of Organs**

In any case where retention of a whole organ is considered a realistic possibility the nearest relative should be forewarned. In all SIDS/SUDI cases it should be assumed that the child's brain will be retained unless the pathologist advises otherwise. Because of practical considerations direct contact by the Procurator Fiscal may not be feasible and it may be necessary for the police Family Liaison Officer to deal with the nearest relative on our behalf. The essential point is that the nearest relative must be made aware of the possibility of organ retention at

the earliest opportunity and this information should preferably be imparted by someone already known to them. All deaths of children where further investigation is required must be referred to VIA. [See Section 26](#).

Unless there has already been contact between the Procurator Fiscal and the family, it is recommended that the Procurator Fiscal contact the police Family Liaison Officer prior to post mortem and confirm that the nearest relatives are aware of the possibility of organ retention (or arrange to have them advised if they are not) and provide them, if appropriate, with a copy of the information leaflet "What happens when a death is reported to the Procurator Fiscal" [Form 01B](#). However the contact with the nearest relative is made, it must be ascertained whether they wish to be notified if an organ is retained.

If the nearest relatives wish to be notified, they should be told by the Family Liaison Officer (or the Procurator Fiscal if appropriate) as soon as the pathologist confirms that an organ has been retained. If the pathologist is able to estimate the likely duration of the retention, this should be communicated to the nearest relatives but it should be made clear that it is only an estimate and not a guarantee.

### **Retention of Tissue Samples, Blood Samples, Blocks etc**

#### Tissues

Tissues to be retained within the present context are here defined as fragments of organs that are not readily recognisable as being part of that organ. They will be used for two purposes - the preparation of paraffin blocks or of "frozen sections". The latter are slides for microscopy that have been prepared from tissues solidified by freezing rather than by embedding in paraffin.

Tissues taken at post-mortem examination for these purposes must, as a technical imperative be small. Multiple tissue blocks may properly be taken, 20 being a reasonable number although this depends on the nature of the death - a large number will, for example, be taken in the event of a cot death, which is defined as an infant death for which no cause can be found after thorough investigation. Tissues are usually stored in formalin in bottles under normal laboratory conditions. Insofar as they are the precursors to the preparation of slides for microscopy, the retention of small tissue blocks must be regarded as an essential component of a full and comprehensive post-mortem examination.

The Human Tissue (Scotland) Act 2006 now specifies that such samples will be considered to be part of the medical records of the deceased and can be destroyed with the medical records when appropriate. Authorisation will be needed from the nearest relatives to use those samples for training, education or research beyond what is needed to ascertain or review the cause of death.

#### **Paraffin blocks**

If adequate paraffin blocks have been prepared, there is very little need for long-term storage of organs or major pieces of tissue in many cases. (There can, however, be a need to retain some against the possibility of needing more frozen

sections in the future.) Paraffin blocks consist of blocks of hard paraffin in which tissue is embedded and from which slides can be made. The tissue has been treated and dehydrated and remains unrecognisable as such. The average block is small, and consists of some 50% tissue. Its preliminary purpose is served once an adequate number of slides have been prepared for the immediate investigation. Nonetheless, it is customary to preserve the blocks more or less indefinitely, largely because we will not know if a study of a death could be found to be incomplete in the future. This may arise because new information is received about the individual case or about such deaths in general. A classic example of the latter arose when, in 1999, it was reported that the presence of iron-laden scavenger cells in the lungs could be used to distinguish cot deaths from those due to mechanical asphyxiation. Every pathologist will have wanted the opportunity to re-examine his or her cases using special staining methods to see if there were any in which the diagnosis ought to be altered, (see, for example, Green, M A 'Time to put "cot death" to bed' (1999) 319 British Medical Journal 697) and the testing of such hypotheses is of vital concern to families past, present and future.

Paraffin blocks will usually be stored in individual boxes within the laboratory. They represent the intermediate, and essential, stage between tissues and slides for microscopy; again, therefore, their preparation is an integral part of the post-mortem examination process.

### **Slides for microscopy**

Aside from the preparation of frozen sections, which is unusual in the ordinary run of hospital autopsies (although as we have said earlier, it may be done), slides for microscopy are prepared by cutting shavings of tissue - or sections - from paraffin blocks. The maximum useable thickness is 10  $\mu$ m - or 1/100th mm. It is, perhaps, worth noting that an extra number of sections will be cut, as, due to the nature of the process, the quality of many will be substandard. The tissue section is then transferred to a glass slide, stained - often several sections are stained with different dyes for different purposes - protected by a cover-slip and secured permanently by means of a self-hardening resin (it is to be noted that the bond is very difficult to break once it is set). A mass of work is involved and the tissue is transformed so that it is well-nigh impossible to regard the material on the slide as meaningful human tissue; it is more rational to compare the status of the slide with that of a retained X-ray film. Slides for microscopy are commonly stored in designated boxes and are generally stored indefinitely - effectively, as part of the patient's clinical record.

The concept of the clinical record sums up the general purpose of retaining slides. The particular reasons for their preparation include:

- They show incontrovertibly the spread of disease and the efficiency, say, of surgery. For example, they may show that the excision was inadequate or that a specific piece of tissue was in fact removed.
- They show the presence of unsuspected disease.

- They demonstrate the effect of a disease on other than the target organ.
- They are the ultimate arbiters between malignant and benign tumours
- They go some way to satisfying the public interest in research.

Above all, they provide concrete and permanent material for reference and debate as to the cause and mode of death in both the medico-legal and academic spheres.

Slides for microscopy represent the logical end of the post-mortem examination and, too many, a post-mortem examination without a permanent record is a wasted opportunity. The balance of benefit in the retention of slides differs significantly from that involved in the retention of organs or major portions of tissue for purposes other than diagnosis.

### **Disposal of retained organs and samples**

Unless the nearest relative has indicated that they do not want further contact relating to organ retention, they should be contacted when an organ has been retained. 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 an autopsy 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. It may be useful to ask the pathologist for an estimate of the length of time required to complete the analysis and to diarise the case, to ensure the matter is not overlooked. Thereafter, the Procurator Fiscal should confirm to the pathologist that the material is no longer required for the purposes of the investigation, and authorise its release or continued retention, as appropriate, again in writing.

### **Organs**

In the case of organs, disposal should be in accordance with any reasonable wishes of the nearest relative; where no view has been expressed the pathologist should be asked to arrange for the organ to be disposed of in a sensitive manner. Generally, there should be no need to retain an organ beyond the period of time required for diagnostic purposes.

### **Samples, tissue blocks and slides**

Unless the nearest relative has sought return of this material, samples of blood, etc should be destroyed. Tissue blocks or slides should be retained with the post mortem records but on the understanding that this material cannot be used for any purpose unconnected with the Procurator Fiscal's enquiry without the

pathologist obtaining the necessary consent/authorisation; eventually such material should be destroyed together with the record. Exceptionally, the nearest relative may seek the return of such material and if this occurs any reasonable request should be treated sympathetically.

The only exception to the above arrangements viz a viz tissue blocks and slides arises in relation to unexplained deaths including cases of Sudden Unexpected Death in Infancy (SUDI) or Sudden Infant Death Syndrome (SIDS). Where suspicious circumstances cannot be excluded it will be appropriate to retain tissue blocks and slides for possible further investigation.

In SIDS and SUDI cases there is no determinate cause of death and advances in medical knowledge may eventually provide a definite answer. Such slides or blocks will be retained with the post mortem records notwithstanding any request for their return. This arrangement also preserves the option of their future use for research purposes provided that the necessary consent/authority is obtained.

### **Disposal options**

Discussions relating to the disposal of retained material are likely to be difficult for most nearest relatives and Procurators Fiscal will be aware of the need for sensitivity. The term "disposal" is used throughout this circular but it should be noted that some nearest relatives will find the term to be less than respectful. Where possible, communications with the nearest relatives should use alternative terminology; e.g. "burial/cremation", "deal with" etc.

Unless the nearest relatives have indicated that they do not wish to discuss arrangements for the disposal of retained material (in which case sensitive disposal by the pathologist will be the only option), the Procurator Fiscal must ensure that the options for disposal of organs have been explained to the nearest relatives. Again it may be appropriate to do so through personal contact, via the police or a funeral director or with the assistance of the GP, hospital or social work staff. It is important to ensure that the nearest relatives are advised of such matters as soon as possible so that consideration can be given to the funeral arrangements. Such matters will be of profound concern to all religious and ethnic groups and delay in providing information is likely to add to the distress of the nearest relatives. The options for disposal are:

1. Sensitive disposal of the retained material by the pathologist
2. Separate burial/cremation of the retained material
3. Delaying the funeral so that the material can be reunited with the body for burial/cremation.
4. Authorisation of retention of the material for medical research, education or for other possible enquiries unconnected with the Procurator Fiscal's investigation.



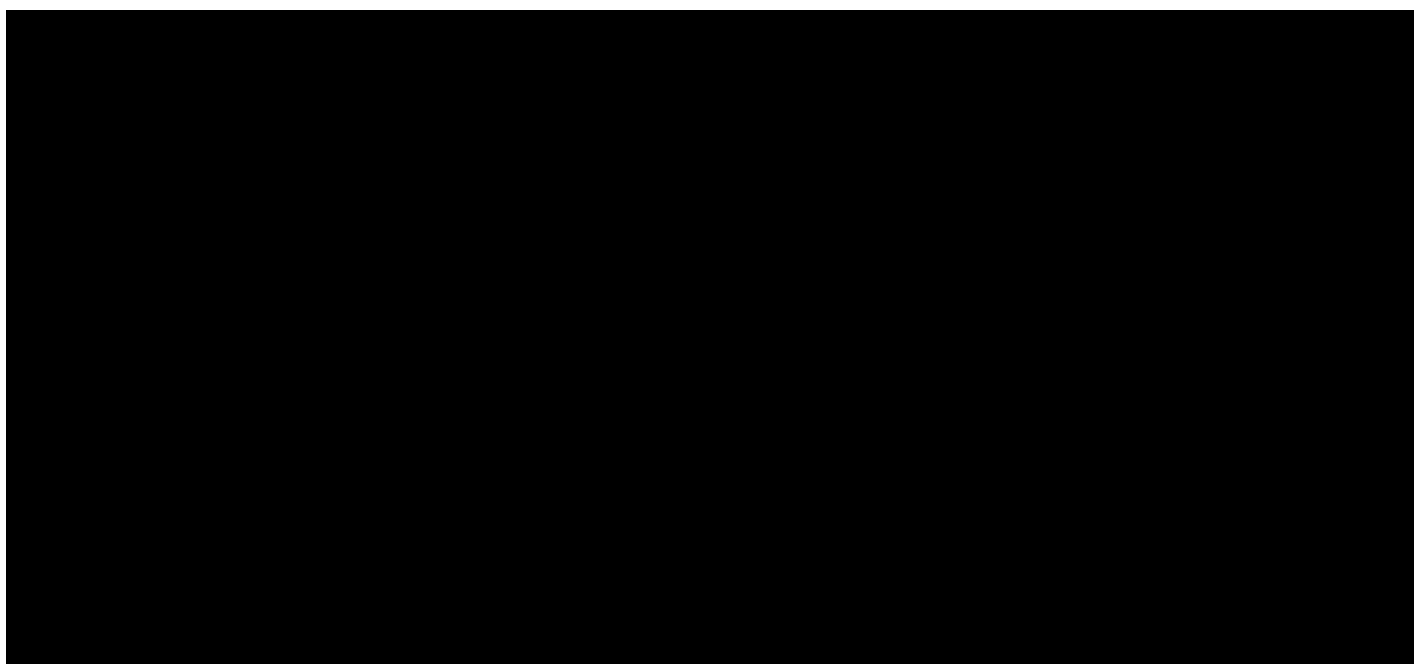
In some areas option 2 may not be permitted by the burial/cremation authorities. It will be appropriate to check the position with the undertaker if the position is uncertain.

Options 2 and 3 may involve additional costs either in respect of storage charges for the body or additional charges for the separate disposal of organs or other material. The issue of costs of disposal is currently being addressed, and policy has yet to be finalised. In the interim, in either case the Department will make a financial contribution up to a maximum of £250. There is a presumption against acceptance of costs in excess of this figure; in exceptional cases where it appears reasonable to make a payment in excess of £250 a report should be submitted to Policy Group so that further consideration may be given to the contribution to be made by the Department.

Option 3 can involve a potential delay of up to 3 months or more and so generally it will be undesirable in the interests of the nearest relatives. There may also be difficulties in regard to storage facilities for the remains. Accordingly, this option should not be suggested as a preferred option but if the nearest relatives are dissatisfied with the alternatives they should be advised that they might wish to consider delaying the cremation/burial.

Option 4 should not routinely be suggested to relatives as an option for disposal. However, in certain circumstances (e.g. SUDI deaths or in deaths associated with a genetic condition) the pathologist may believe there would be value in retaining material (generally, tissue blocks and slides) for research, educational or other purposes. In this case, the pathologist (or an alternative medical practitioner) must obtain the authorisation of the nearest relative and the consent of the Procurator Fiscal before making any use of the material unrelated to the Procurator Fiscal's investigation. This is an issue for the pathologist concerned, although Procurators Fiscal should be alert to the possibility of this request and confirm with the pathologist whether such a request is likely to be made prior to discussing disposal options with the nearest relative.

A written note should be kept of the nearest relative's decision regarding disposal.



## **Scientific Examination**

Whether and to what extent further scientific examination is required will depend on the circumstances of the death and will ultimately be a matter for the professional judgment of the Procurator Fiscal. Only general guidance can be offered here.

Broadly, further scientific examination is most likely to be required for one of three purposes:

- (a) To identify the deceased when this cannot be done physically;
- (b) To assist in determining the cause of death or to shed light on the surrounding circumstances or
- (c) To investigate issues of fault, failure (mechanical or human) or culpability.

## **Determination of the Cause of Death etc - Toxicology**

The commonest form of further scientific examination is toxicology. Toxicology must never be instructed without good reason. The following general rules are suggested in relation to:

### **Suspicious deaths:**

- Suspected homicide: Alcohol and additional screening if indicated.
- Drug related death: Alcohol and all drugs. (**See Note 1 below**)
- Child Deaths (Suspected Abuse): Alcohol and all drugs. (**See Note 1 below**)

### **Non-suspicious deaths:**

#### Road Traffic Deaths:

- In cases of suspected criminality; deceased driver, cyclist or pedestrian - toxicology for alcohol and all drugs in all cases; (**See Note 1 below**)
- In other cases; deceased driver, cyclist or pedestrian - toxicology for alcohol in all cases, toxicology for drugs if indicated;

- Deceased passenger - no toxicology unless exceptional circumstances;
- Drugs related death - toxicology for drug(s) implicated, general drug screen if not known;
- Sudden Infant Deaths - no toxicology unless indicated, e.g. toxicology for drugs or alcohol if there is evidence of parental abuse;
- Fire Deaths - toxicology for carbon monoxide in all cases, toxicology for alcohol in domestic fires and in other cases where indicated, full drugs screen where indicated;
- Apparent Carbon Monoxide Poisoning (e.g. car exhaust suicide, faulty gas fire etc) - toxicology for carbon monoxide in all cases and drugs or alcohol if indicated.
- Sudden deaths in custody - whether apparently suicidal or natural, toxicology for alcohol, and a screen for any significant medication. A full drugs screen unless the deceased would not be expected to be a drug abuser (e.g. elderly prisoners).
- Apparent suicides - where it is thought that the death was due to an overdose of drugs, analysis should be carried out for the substance or substances suggested by the circumstances. In other cases including hanging, shooting, a fall from a height, plastic bag asphyxia, incised wounds to the wrists etc, drowning, impact with a train, inhalation of exhaust fumes, electrocution etc there should be a screen for alcohol. Apparent suicides of those receiving mental health treatment either in the community or in a psychiatric hospital, analysis for medication prescribed to treat the psychiatric condition; and alcohol.
- Deaths under medical care - toxicology should be necessary only where there is a suggestion/suspicion that medication may have some significance for the cause of death. In relation to a sudden death of a patient in a psychiatric hospital, where the death is apparently natural, toxicology should not be necessary.
- Deaths due to poisoning - the toxic substance indicated by the circumstances.
- Deaths resulting from an accident and Deaths where the circumstances seem to indicate fault or neglect on the part of another person; alcohol and all drugs where indicated.
- Drowning: Alcohol and full drugs screen.
- Solvent abuse death: Screen for solvent indicated, alcohol and full drugs screen

Additional analysis may be indicated in cases falling within the foregoing categories where there is uncertainty about the cause of death following post mortem examination, or where that examination is unlikely to yield much

information (for example, badly decomposed bodies or bodies severely damaged by fire). Such investigations should be instructed following discussion with the pathologist, and in the light of the information obtained at autopsy.

### **Note 1**

Analysis for all drugs reflects the established culture of drug abusers in many areas of taking "cocktails" of various different types of drugs. An examination for one of these drugs on its own frequently does not produce a fatal level. It is necessary to be in a position to explain to the relatives that death was caused by a combination of e.g. temazepam, heroin, alcohol, and, increasingly, methadone, all of which act as respiratory depressants, the combined effect of which is synergistic rather than additive.

### **Note 2**

Cot deaths. A paediatric pathologist has advised that it is not unknown for parents to attempt to sedate infants by feeding alcohol to them, particularly in poorer households where there are more strains and stresses. Although cot deaths occur across all social groups, more are seen in lower social groups. There is a high incidence of cot death in Glasgow, and that may simply reflect the large numbers of people living in deprived areas and involved in drug abuse. Given that SIDS is a diagnosis of exclusion, where there is usually an absence of specific findings indicating any other cause of death, it is justifiable to carry out the additional limited enquiry of screening for alcohol in these cases. The same may not hold true in other parts of the country, however.

### **Note 3**

The Procurator Fiscal's instruction on toxicology in a particular case to be communicated to the pathologist and from him or her to the analyst, will require to be in writing, by means of a fax to the pathologist at the mortuary, Department of Forensic Medicine, or NHS hospital where the autopsy is to be carried out. Arrangements will have to be put in place for secure transportation of samples etc for examination if the laboratory is not situated locally. Particular attention must be paid to establishing a chain of evidence if there is question of the results of examination being used as evidence in a criminal case.

## **Determination of the Cause of Death etc - Histopathology and Neuropathology**

Histopathology is the branch of pathology that deals with the study of the microscopic structure of diseased tissue. The histopathologist receives tissue specimens taken at post-mortem examination, which are then processed, usually including embedding in paraffin wax, and thin sections are cut and stained for microscopic examination to determine the underlying disease process.

Neuropathology deals specifically with the examination of brain tissue.

Experts in these fields many have to be instructed, particularly if advised by the forensic pathologist. Neuropathology is most likely to be required if the death is due to a brain disease such as Variant CJD. [See Section 20.](#)

**Instruction of Experts.** [See Section 29](#)

### **Forensic Science Examination**

In addition, in cases where there is a likelihood of criminal proceedings and occasionally in non-criminal or suspicious deaths, some forensic scientific work may be necessary and generally Police SOCO will collect evidence and pass that evidence to the appropriate laboratory for examination under the terms of the National Agreement. [See National Forensic Science Protocol.](#)

### **Policy Inquiry 10**

The level of investigation is at the discretion of the Procurator Fiscal.

All suspicious deaths or deaths where there is a possibility of criminal proceedings must be investigated thoroughly and expeditiously. The police will be involved in such investigations and will be subject to the direction of the Procurator Fiscal. There is an obvious need in such investigations for close and continual liaison between the Procurator Fiscal and the investigating officers. A two-doctor autopsy usually will be required in such investigations. Where the result of the autopsy is inconclusive or raises additional matters, or there are matters detected at the autopsy that are not compatible with other factors in the case, further exhaustive investigation will be required and the police will be required to be instructed.

On the other hand, there may be instances where the death did appear to be suspicious at first, but the autopsy went on to establish that the cause of death was not suspicious and the circumstances did not give rise to the possibility of criminal proceedings. In such circumstances it is to be appreciated that the nearest relative will inevitably be of the view, given the initial feedback they will have received from the police, that the circumstances are suspicious. As a result the nearest relative will inevitably have a number of matters that they will wish to raise when interviewed by the Procurator Fiscal.

Procurators Fiscal will require to ensure that they are able to not only answer all such questions, but are also able to satisfy the nearest relative that all legitimate and necessary lines of inquiry both on the part of the police and the pathologists or toxicologists have been exhausted. A common example is where a deceased person has been found within their home or in a public place with an apparent head injury. There are no eye witnesses to the incident and no indication for instance that the deceased person has been robbed. The matter is treated as a suspicious death. However, as a result of the autopsy the pathologists have established that the cause of death was due to a non-suspicious cause e.g. a heart attack, acute alcohol intoxication, or alcohol related liver disease. In the latter there will often be apparent areas of marked bruising to the deceased's body which is often as a result of falls of colliding with furniture. With the

exception of the cause of death as established at the autopsy, the circumstances of the death would have all the apparent hallmarks of a suspicious death. When the nearest relatives attend for interview, the nearest relatives may well be convinced, despite the result of the autopsy, that the death is nonetheless suspicious. Where all legitimate lines of inquiry have been exhausted, the nearest relatives will be less likely to be dissatisfied when they attend for interview and are informed that the circumstances indicate that the death is not suspicious.

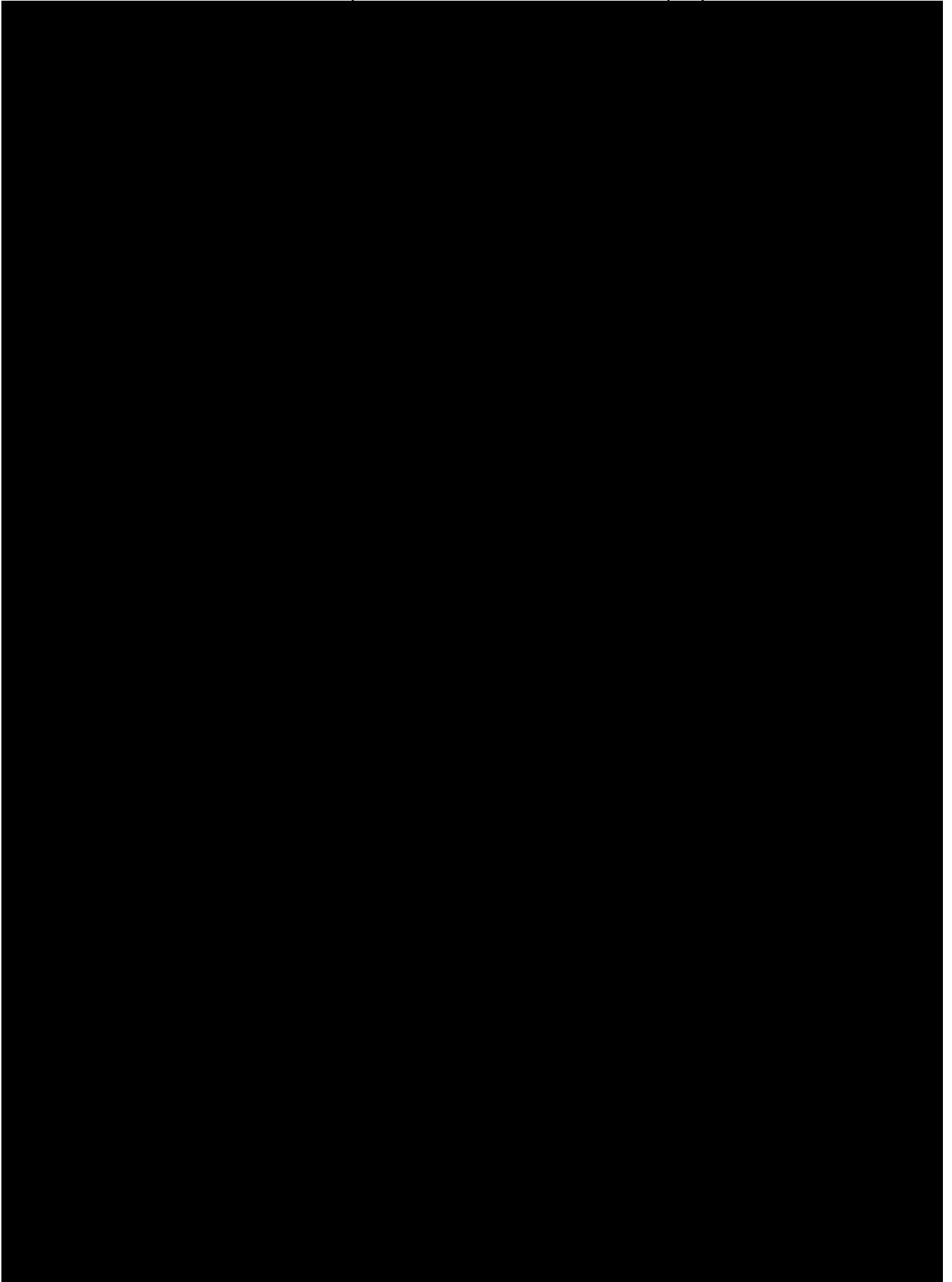
Road traffic deaths also require to be investigated thoroughly as well as expeditiously particularly where another vehicle or driver is involved. (See [Section 22](#)).

In other instances there may require to be a restricted police investigation. For instance, a death may be reported to the Procurator Fiscal by a doctor where the deceased has died as a result of contracting pneumonia when already immobile as a result of a fracture to the hip or leg. In such circumstances the police will only require to investigate the matter in relation to the circumstances leading to the fracture of the limb, to ensure that there was no criminality or culpability by another person. In such circumstances the police should be expeditiously instructed and informed that they are to restrict their investigation to the circumstances of the fracture e.g. an apparent fall by the deceased in the street or in a nursing home, and to report the matter as quickly as possible to the Procurator Fiscal verbally and thereafter followed up as quickly as possible with a brief electronic report. In the vast majority of such instances there are no grounds for suspicion or concern and therefore the delay in allowing the nearest relative to proceed with the funeral arrangements should be kept to a minimum. However, since the doctor who reports the death is unlikely to have witnessed or indeed have first-hand knowledge of the circumstances which gave rise to the fracture, the circumstances giving rise to the original fracture nonetheless require to be investigated by the police to this limited extent.

As with all deaths, Procurators Fiscal should note all relevant information on the case papers, particularly when this information is given verbally. Procurators Fiscal will also require to regularly review the progress of any police investigation into a death, where these are protracted or where the police investigation amounts to anything more than simply submitting an initial death report to the Procurator Fiscal. Where there is any delay by the police in updating the Procurator Fiscal as to the progress of an investigation, the Procurator Fiscal should request an immediate update from the police on the progress of the investigation in general or in relation to any lines of inquiry which the police have indicated they are following or have been instructed to follow.

In many instances, particularly those where the circumstances of the death are suspicious or there is a real possibility of criminal proceedings, the police will have commenced their investigation without initially being instructed by the Procurator Fiscal. The police, particularly those officers of seniority or with a particular expertise, will inevitably be able to carry out their inquiries, at least initially, without being actually so instructed by the Procurator Fiscal. However,

Procurators Fiscal should bear in mind that the police carry out such inquiries on their behalf and are subject to their direction in relation to inter alia sudden deaths. The inquiry into the sudden death is the Procurator Fiscal's inquiry and there will inevitably be a need for the Procurator Fiscal in many cases to issue instructions and to direct the police in the course of their inquiry.



## **Treatment of Drug Related Death 23**

The Lord Advocate's policy is that, where there is any evidence that the unlawful supply of a potentially fatal drug results in a fatality, the death shall be treated as suspicious. The policy includes deaths where the deceased has given the accused money and requested that the accused purchase drugs which the deceased then voluntarily ingested.

**The mens rea for a charge of culpable homicide arising from the unlawful supplying/administration of a controlled drug was clarified by the Appeal Court in MacAngus v HMA; Kane v HMA (see [COC 6/2009](#)),** which held that such a charge was relevant only if the Crown offered to prove that the supplying/administration was, in the circumstances, reckless.

The supplier should be prosecuted in the High Court where it can be proved that the accused supplied the drugs that caused the death and that such supplying/administration was, in the circumstances, reckless.

### **Investigation**

Immediately on a drug related death being reported to the Procurator Fiscal the police should be instructed to protect the locus and secure any relevant evidence, such as bottles of pills, syringes, drugs paraphernalia, tick lists, etc. The police should be instructed to carry out further investigations, including enquiries into the source of the drugs.

Investigations should be pursued as far as possible in an attempt to identify the supplier and consideration thereafter be given to a charge of culpable homicide.

These investigations tend to be protracted and arrangements should be made with police to have regular contact and review, including early case conferences. Although each case will have its variations there are certain lines of enquiry which will be standard and subject to review, (e.g. interview of known associates, family members, analysis of diaries and mobile phones.) It is often difficult in these cases to determine whether the person who handed over the drug is to be treated as a suspect rather than used as a witness. There are often cases where the drug was procured for and supplied to the deceased by a friend, and because he was acting on the deceased's behalf, the friend's culpability is often deemed as being reduced. This is often based on a judgement call as to the character of the friend. This sort of issue would again be best dealt with through early discussion/meeting.

### **Post Mortem Investigation**



As all drug deaths should be treated as 'suspicious deaths' a two doctor post mortem examination, with appropriate toxicology, must be instructed in every case. The exception to this is where there is reliable evidence available at the time the death is reported which excludes the possibility that the death resulted from the supply of a controlled drug (for example, where there is evidence that the death resulted from suicide or accidental overdose involving over the counter drugs.)

Toxicology will generally be the principal source of evidence for determining cause of death, and the results should be spoken to by two qualified analysts. The pathologist should be asked to provide an opinion as to the effect of the drugs found and if necessary a second corroborating opinion should be sought.

When the police report a drug-related death there is usually an indication of the types of drugs used, or suspected to have been used, by the deceased. In such cases it will be necessary to obtain appropriate samples for toxicological analysis.

In cases where there is evidence that may lead to criminal charges, full mortuary protocol should be observed, including a corroborated chain of identification of the deceased, and sufficient samples should be taken to allow for defence analysis if required. Procurators Fiscal should refer to [Chapter 2.4.1 to 2.4.6](#) of the Book of Regulations for a fuller description of the proper conduct of a post mortem examination. It should be noted that the police will not observe full mortuary protocol in a suspected drug death unless they are instructed to do so by the Procurator Fiscal.

There is generally no need for the Procurator Fiscal to attend an autopsy, so long as there is in place suitable arrangements to gather and preserve evidence. Attendance at the locus should be considered by the depute/Procurator Fiscal taking the notification with recording of reasons for not doing. On receipt of the toxicology report, Procurators Fiscal should provide a copy to the police. The police have a duty to investigate the source of the drug supplied to the deceased, but it is also important that they gather intelligence information about drug trends and other relevant factors. The toxicology report can assist in this regard. Other parties who may have an interest in obtaining copies of toxicology reports are local Drugs Action Teams and other providers of drug misuse services. If such a body requests a copy of a toxicology report, Procurators Fiscal can provide it while ensuring that the deceased's name is removed and the report is anonymised. Nearest relatives may also be provided with a copy on request.

### **Release of the Body**

Where evidence becomes available which conclusively excludes the possibility that the death resulted from the supply of a controlled drug the body may be released without the need to report for Crown Counsel's instructions.

Where there is a possibility of criminal proceedings for culpable homicide and a specific suspect has been identified, the death shall continue to be treated as a

suspicious death. Refer also to [Chapter 2](#) regarding release of bodies in suspicious deaths.

### **Report to Crown Office**

Where evidence becomes available, during the investigation, which conclusively excludes the possibility that the death resulted from the supply of a controlled drug the death need not be reported to Crown Office.

### **Precognition**

The following matters require to be considered:

In establishing the cause of death, regard will usually have to be given to the results of toxicological examination and the significance thereof. The toxicology report should be signed by two expert witnesses and must be considered by the pathologists as soon as possible. There is a need to precognosce carefully expert toxicological witnesses and also to check that there is corroboration of the taking of the samples from the body for toxicological analysis. Information should be sought as to the latest statistical analyses and documentary evidence to this effect listed as a production. Expert opinion as to what amounts to a fatal dose and the significance of drug "cocktails" must be obtained. Procurators Fiscal should be aware of the variables in relation to individual susceptibility to particular drugs and combinations. Any impurities in the drug ingested may affect an individual's response.

In light of the Court's comments (at paragraph [26]) in MacAngus and Kane, in any case where consideration is being given as to whether dealers further up the supply chain should be considered for prosecution in relation to their involvement in supplying the drugs that were ultimately supplied to the deceased, no proceedings should be instituted on such a charge except on the instructions of Crown Counsel.

### **Evidential Issues Arising in Drug-Related Culpable Homicide**

The following essential facts must be proved by corroborated evidence and must be addressed in the precognition where a charge of culpable homicide is under consideration:

- Did the deceased die as a result of the ingestion of the drug in question?

The pathologist and toxicologist should consider this issue. The pathologist should be able to give evidence to exclude another likely or possible cause of death. The conclusion that the deceased died as a result of an overdose is essentially a diagnosis by exclusion, taken along with toxicology evidence that a concentration of the drug(s) in the blood/urine/liver fell within the accepted fatal range. The toxicologist should always be precognosced carefully and in detail. Difficulties have arisen in the past because the toxicological analyses were done at the police forensic laboratory and the forensic scientist did not have the necessary expertise to give authoritative evidence on the generally accepted fatal range of a particular drug. Detailed precognition of the forensic scientists

should reveal any possible weaknesses in this regard so that, if necessary, consideration may be given to obtaining additional witnesses. There may be difficulty in establishing that the mechanism of death was an overdose of a specific drug. Where there is more than one possible mechanism of death (e.g. an air embolism brought about by the injection or inhalation of vomit), expert evidence will be crucial and there is a need for detailed precognition.

- Is there evidence of a particular act of supplying the drug in question to the deceased at some point prior to the death?

Corroboration of this fact is essential. It is also essential to consider the time frame. Evidence of various acts of supplying with vague time frames and/or with no consistency of testimony as to time, to enable the inference to be drawn that at least two witnesses are speaking to the same act, is of little evidential value.

- Is there a causal connection between a particular act of supplying and the death?

It is unlikely that direct evidence will be available and it is essentially a matter of inference. In the most clear cut case there would be evidence that the deceased had not consumed any of the drug in question for a reasonable period of time preceding the proved act of supplying by the accused. There would also be evidence that the deceased did not consume (or did not have the opportunity to consume) any other quantity of the drug in question before death. In many cases it will be a matter of degree as to whether the evidential inference is strong enough for the matter to be considered by the jury.

In the case of *MacAngus v HMA*; *Kane v HMA* referred to above, the Appeal Court observed (at paragraph [42]):

"Scottish authorities tend to suggest that the actions (including in some cases deliberate actions) of victims, among them victims of full age and without mental disability, do not necessarily break the chain of causation between the actings of the accused and the victim's death. What appears to be required is a judgment (essentially one of fact) as to whether, in the whole circumstances, including the inter-personal relations of the victim and the accused and the latter's conduct, that conduct can be said to be an immediate and direct cause of the death".

The court then held (at paragraph [48]):

"The adult status and the deliberate conduct of a person to whom a controlled drug is recklessly supplied by another will be important, in some cases crucial, factors in determining whether that other's act was or was not, for the purposes of criminal responsibility, a cause of any death which follows upon ingestion of the drug. But a deliberate decision by the victim of the reckless conduct to ingest the drug will not necessarily break the chain of causation".

- Is there evidence that the supplying/administration was, in the circumstances, reckless?

In *MacAngus and Kane* (at paragraph [30]), the Court held that:

"a charge libelling culpable homicide in the context of the supplying (or the administration of) a controlled drug is relevant only if the Crown offers to prove that the supplying (or the administration) of the drug was in the circumstances reckless."

Further, the Court observed (at paragraph [31]) that it was desirable in such cases for the Crown to expressly aver in the charge libelled that the conduct was reckless.

### **Nearest Relatives**

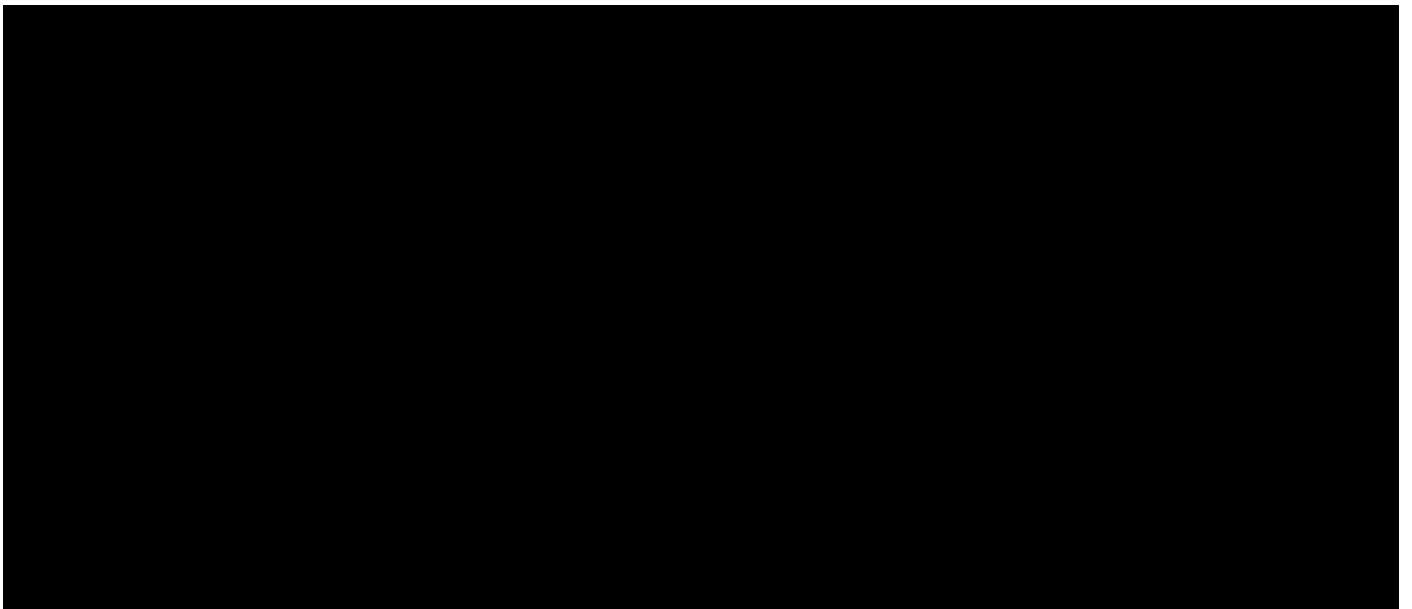
VIA should always be notified of such deaths. [See Section 26.](#)

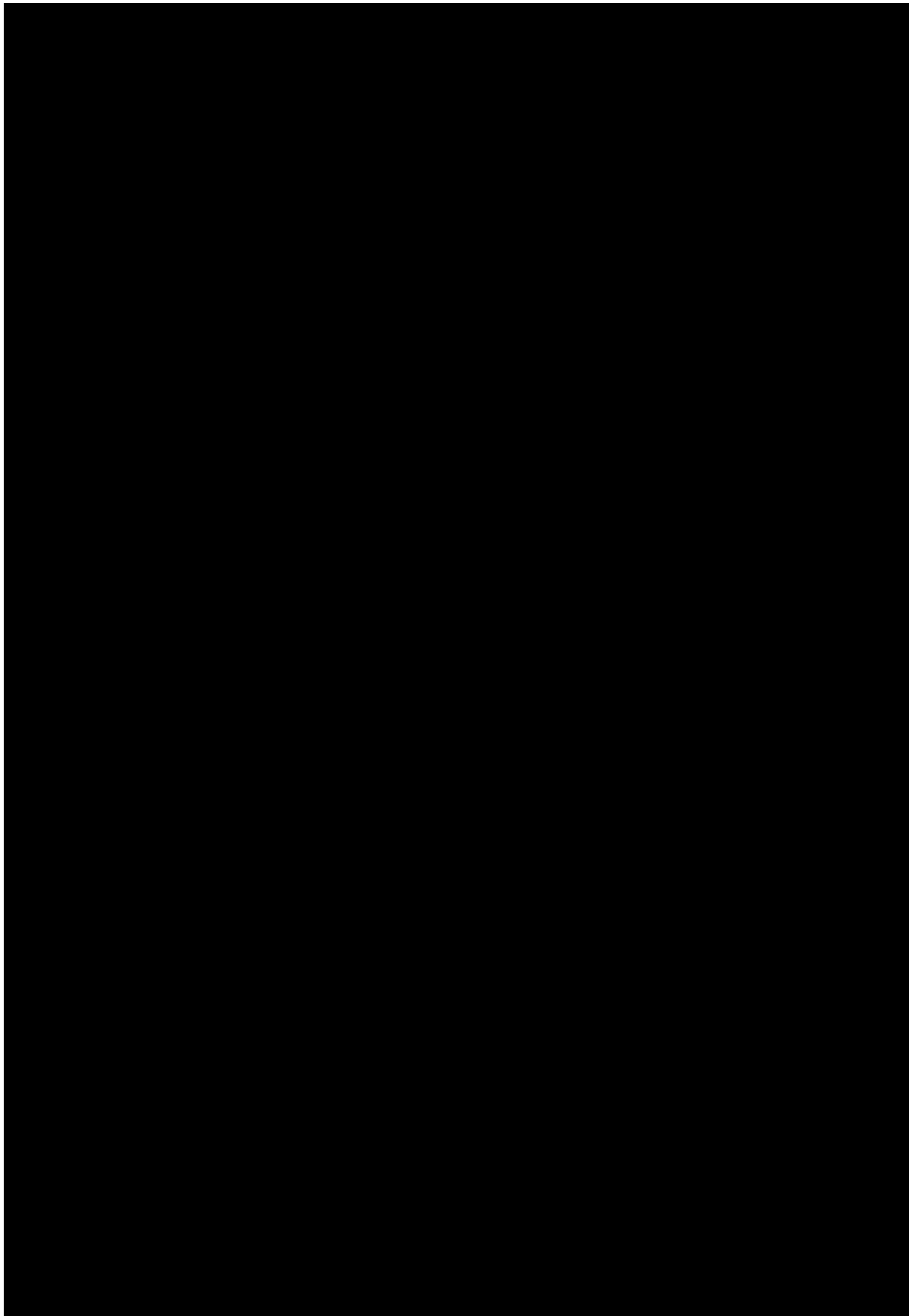
The availability of a Family Liaison Officer would be advantageous in some cases. Nearest relatives have often been confused by the way the Police have treated the place where the deceased was found. In one case, they had advised the nearest relative that it was "a crime scene", which technically it is, but this only served to heighten the anxiety of the family without any proper explanation.

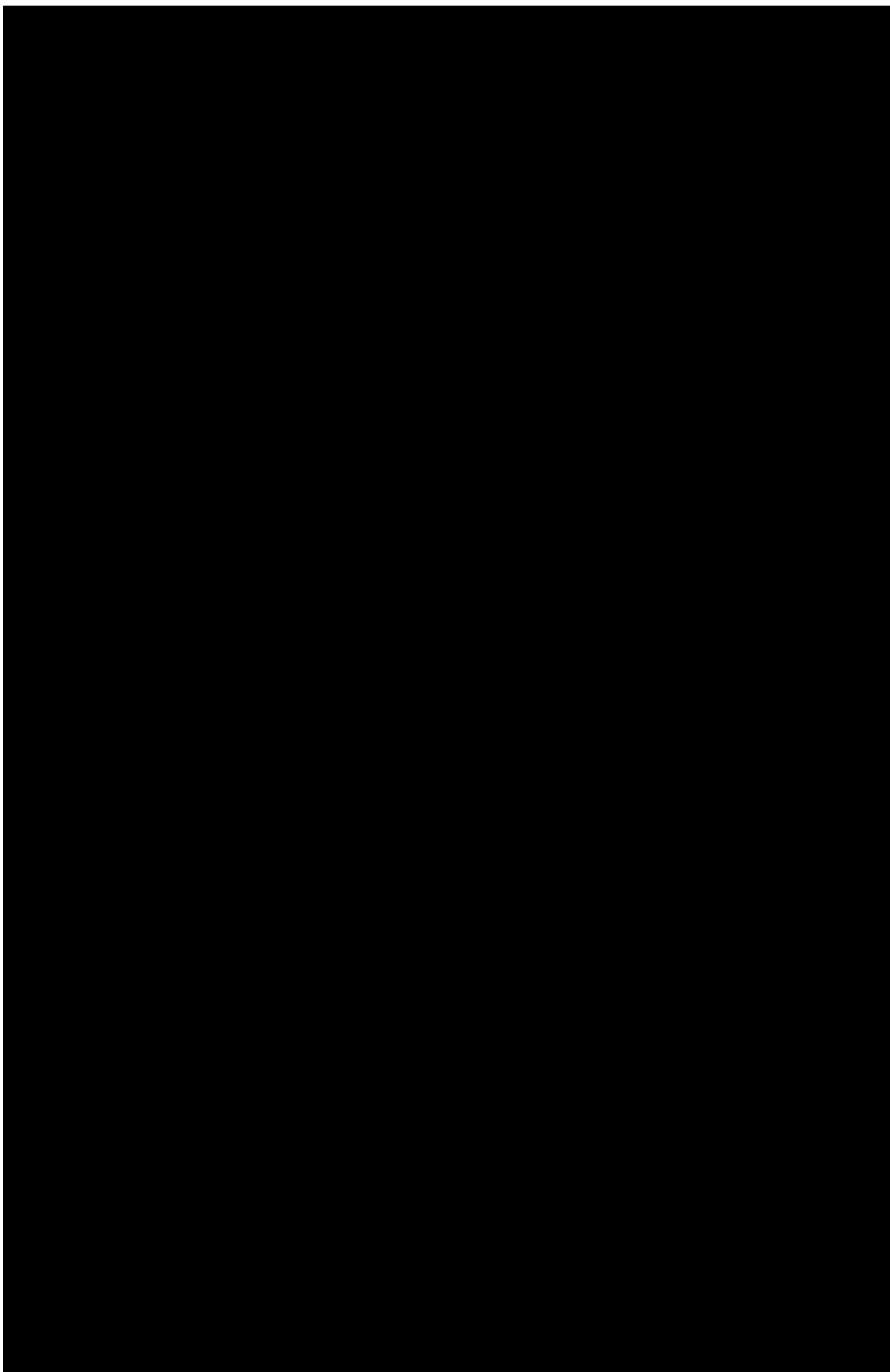
These investigations tend to be protracted and arrangements should be made with police to have regular contact and review, including early case conferences. Although each case will have its variations there are certain lines of enquiry which will be standard and subject to review, (e.g. interview of known associates, family members, analysis of diaries and mobile phones.) We have a sense that not all lines of enquiry are exhausted at the earliest possible point. There are, of course, resource issues for the Police and in many cases they carry on for some time with enquiries that are likely to provide only general information.

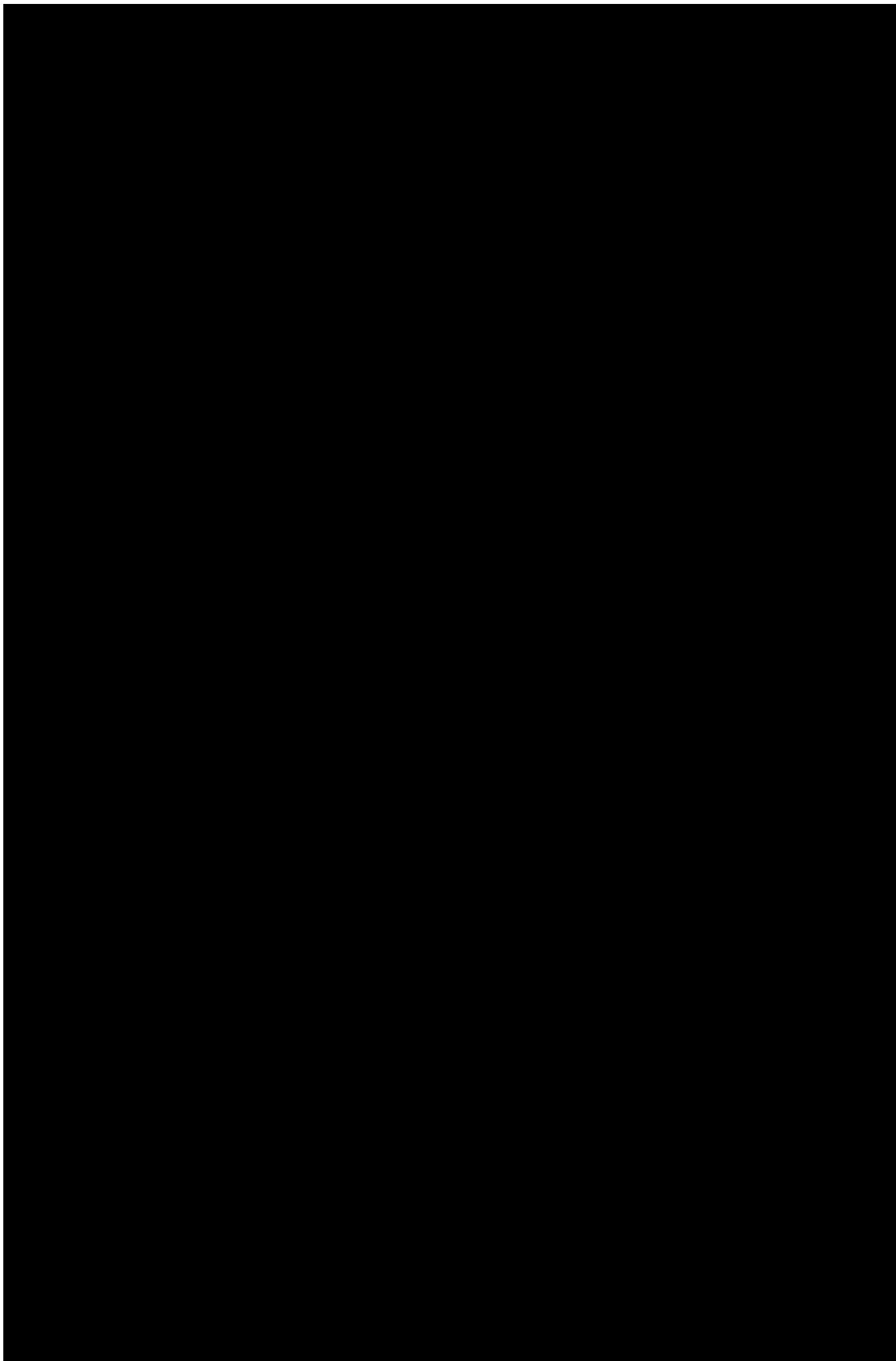
There may be some interest by local DAT's to arrange a case conference in relation to a death. It is not considered appropriate for the Procurator Fiscal or Police or any other Investigating agency to be involved in such a conference.

See also [British National Formulary](#) for helpful material.









## **Needs of Nearest Relatives**

### **Introduction**

A sudden death is a traumatic event for most nearest relatives and families. At a time when they may be feeling very distressed because of the death they also have to deal with a variety of new and sometimes bewildering procedures, liaise with official agencies and make important decisions. Any communication or contact with the nearest relative should be carried out with this in mind. Staff should always be sensitive to the impact of the death on the nearest relative. While Procurator Fiscal and VIA staff are not there to act as professional support or counsellors, communications with the nearest relative should be carried out in a supportive and understanding way.

The Procurator Fiscal retains the principal duty to liaise with the nearest relative in all deaths where further investigation is required and, in particular, to provide information about the progress of the death investigation (but not any criminal proceedings). In many cases VIA also has a key role to play in providing information on criminal proceedings, in advising about support agencies and in easing any contact with the Procurator Fiscal. Such joint working enables the



Procurator Fiscal to concentrate on the investigation, leaving the provision of basic information and advice on support to VIA.

### **Early Liaison with nearest relative re Initial Enquiry**

The Procurator Fiscal deals with many deaths by initial enquiry and no further investigation is required. It would not be usual for the Procurator Fiscal to have contact with the nearest relative in such a case unless they initiated the contact. In those few cases, contact with the nearest relative will be brief and will normally deal with how soon the remains can be released. In some cases, where no death certificate has been issued, the nearest relative may contact the Procurator Fiscal to discuss why no certificate has been issued and what alternatives are available. Where no other grounds for further investigation exist, it is often helpful for the nearest relative to be advised that a discussion with the deceased's GP might resolve the matter. On rare occasions, the family may contact the Procurator Fiscal to indicate that they have concerns about a death in which a certificate has been issued. Such concerns must be noted and further investigation instituted.

It is important, where contact has been made, to ensure that the nearest relatives are kept advised of the progress of enquiry and any subsequent further investigation - to the extent that to do so is consistent with the proper conduct of the investigation and also to the extent that it is consistent with their wishes. Some grieving nearest relatives will not want to receive detailed explanations of the circumstances of the death nor of the process of its investigation; it is essential that such wishes should be respected. It is also essential to ensure that the nearest relative has a contact point within the Procurator Fiscal's office to approach for further information.

In all cases where the Procurator Fiscal has had contact with the nearest relative/family, they should be sent the general information leaflet, "[Role of PF Investigating Deaths Leaflet](#)". It is designed to provide basic, essential information to families in the immediate period following a sudden death. It recognises that, at this stage in bereavement, many relatives do not want to receive detailed information but that it is important to provide a contact point so that further information can be sought by those who require it at a time when they are able to deal with it. This leaflet does refer to the possibility of a post mortem examination being required but stresses that just because the Procurator Fiscal is involved does not mean to say that a post mortem examination will be needed.

See below at, "Liaison about post mortem examination" for information about what to do when a post mortem examination is required.

### **Deaths Referred to VIA**

Certain categories of deaths are automatically referred to VIA for a full VIA service to the family and these are listed at category A below. Deaths in category B may be referred to VIA but the involvement of VIA with the family is

to be a matter of discussion and agreement between the relevant Procurator Fiscal and VIA staff. It is good practice in all relevant cases for Procurators Fiscal to discuss and agree referral and liaison arrangements with local VIA staff to ensure that each provides an effective and complementary service to families of deceased.

### **Category A**

1. Murder
2. Other Homicides
3. Definite or Suspected RTA, Section 1/3A (Section 3 cases where it may be a Section 1)
4. Patent Section 3 Cases
5. RTA no criminal proceedings, e.g. patent evidence that other driver not at fault; Deceased patently at fault
6. Accident at Place of Work or in Course of Employment
7. Child Deaths
8. Deaths identified as potential Discretionary FAIs

### **Category B**

1. Drug Related or Solvent Abuse
2. Suicide
3. Drowning
4. Medical Negligence
5. Death in Custody

### **Diversity Issues**

Procurators Fiscal should be made aware at an early stage of any issues that may help to shape the views of the nearest relative about, for instance, post mortems or burial arrangements. Further guidance on cultural issues in relation to deaths has been produced by the Diversity Team. Staff should also pay careful attention to any matters that may make communication with nearest relatives more complex and should take steps to ensure that all nearest relatives have the same opportunities for liaison and information. Factors to be taken into account include:

- (a) Where the nearest relatives live;
- (b) Language;
- (c) Cultural and religious beliefs;
- (d) Disabilities (such as deafness or learning difficulties).

In some communities women are not encouraged to speak direct to external authority figures such as the police and the prosecutor. Care should be taken in such situations to maintain a balance between respect for cultural differences and an individual's right to equal treatment. Procurators Fiscal should seek to ascertain the woman's wishes and no assumptions should be made in advance of any such discussions.

## Liaison with nearest relatives re further investigation

First contact with nearest relatives in cases requiring further investigation:

- Where the Procurator Fiscal considers it necessary to further investigate a death the Procurator Fiscal must take steps to ascertain what, if any, contact has been established with the nearest relative. In particular, the Procurator Fiscal needs to clarify whether a Police Family Liaison Officer (FLO) has been appointed, and, if so, to find out what liaison has taken place with the nearest relative and what information has already been provided by and to them.
- In conjunction with the police, reporting doctor or reporting agency the Procurator Fiscal should obtain information about the family structure and decide who is to be the most appropriate point of contact. (For further advice on this matter see "Contact Point within Family" below).
- It should be established whether the nearest relative has any particular immediate needs, e.g. whether there is a need for translation (including Braille translation) and whether there are any religious or cultural rites or requirements to be observed following the death.
- The nearest relative should be notified of the involvement of the Procurator Fiscal. If appropriate such notification may initially be made via a third party such as a police Family Liaison Officer, social worker or doctor. In such circumstances the initial contact should be followed up by written confirmation of the involvement of the Procurator Fiscal.
- An initial letter should be sent to the nearest relative within 2-3 weeks of the Deaths Report being received from the police. [A specimen letter](#) (Letter to Next Of Kin explaining PF procedures with deaths (DEAFAMLET.DOC)) is available. Where VIA is involved in the case, a copy of the letter should be sent to the relevant VIA Officer. What the nearest relatives then do with that information is a matter for them. If they choose to pass it to relatives abroad for them then to use the death of their relative in support of their application for a passport or entry Visa to the United Kingdom that is open to them. It is a matter for the appropriate Visa Officer in their country of origin to consider whether that satisfies the requirements for such a passport or visa to be granted.
- The Procurator Fiscal **should not in any circumstances** issue a letter to any person stating that the entry of another person, including deceased's relatives, genuine or unconfirmed, to the United Kingdom is required to further our investigation, whether to assist in identification of the deceased or otherwise. In those circumstances the Procurator Fiscal should ascertain the name and whereabouts of that person, together with any relevant contact details and take appropriate steps via the International Co-operation Unit at Crown Office to secure either their attendance, or the obtaining of their evidence, whether by letter of request or by other means.

## **Contact point within the family**

It will be a matter for the Procurator Fiscal to decide who is the most appropriate nearest relative to contact. It may not always be easy to decide who should be contacted and who should be asked to attend any meeting with the family - for example, where a deceased had a partner as well as blood relatives. Usually, the contact point will be the person with the most immediate connection to the deceased, and this may include a partner. In some cases, it may be necessary to contact more than one relative, and to meet them separately. The Human Tissue (Scotland) Act 2006, at Section 50, gives a hierarchy of nearest relatives that is to be used to identify the nearest relative whose authorisation may be required for certain uses for organs etc. This may be of some assistance to Procurators Fiscal in helping to identify who should be considered to be the nearest relative.

In other instances the most obvious nearest relative may be a potential accused, particularly in a fatal road traffic collision. The approach to be taken in such cases will depend very much on the circumstances of the case. Usually there will be another suitable relative who can be contacted. In general, it would not be appropriate to communicate with a relative who is a potential accused, other than in writing or through his/her solicitor.

## **Subsequent Contact with Nearest Relatives in cases requiring further investigation**

The Procurator Fiscal or VIA staff should find out what level of detailed information the nearest relatives wish to have. Some nearest relatives may find certain material particularly distressing and may prefer to be given an outline only. However, no assumptions should be made about this and the nearest relatives should be given a choice. Where criminal proceedings are likely, the nearest relatives should also be advised that distressing details might become public knowledge if they form part of the evidence at any trial.

It is important to ensure that a proper record is kept detailing any preliminary discussions about the arrangements, the agreement reached concerning arrangements, and the details of other communications with the nearest relative (including any contact by phone). In the aftermath of bereavement, particularly a sudden death, grieving relatives may find it helpful to receive written confirmation about the key points of any less formal contact. The need for sensitivity in such correspondence cannot be over-emphasised.

A progress report should be sent to the nearest relative within 6 weeks of the initial contact except in cases where criminal proceedings have begun. This report may be in the form of a final letter where the investigation has been completed. Copies should always be sent to VIA where they are involved with the case.

## **Liaison about post mortem examination**

In all cases the Procurator Fiscal should send the nearest relative the general information leaflet, "[Role of PF Investigating Deaths Leaflet](#)". It is designed

to provide basic, essential information to families in the immediate period following a sudden death. It recognises that, at this stage in bereavement, many relatives do not want to receive detailed information but that it is important to provide a contact point so that further information can be sought by those who require it at a time when they are able to deal with it. This leaflet does refer to the possibility of a post mortem examination being required but stresses that just because the Procurator Fiscal is involved does not mean to say that a post mortem examination will be needed.

Where a post mortem examination, involving a pathologist's "view and grant", non or partially invasive post mortem examination or invasive post mortem examination, is instructed by the Procurator Fiscal, the nearest relative must be notified. This may be done in the first instance through the FLO, doctor or social worker that is closely involved with them.

Where a post mortem examination is instructed, arrangements should be made to ensure that the nearest relatives are notified. To assist in such communication a brief information leaflet concerning post mortems has been prepared "Post Mortem Examination Leaflet". This leaflet is designed for when an invasive post mortem examination will take place or has taken place and does discuss organ and tissue retention. It must not be sent if there is not to be an invasive post mortem examination.

Where to do so is compatible with the proper conduct of the investigation, the nature and purpose of the examination should be explained. An explanation of the need for post mortem examination, and of its nature, should be provided, unless there is an indication that the nearest relative does not wish to receive such information. The level of detail provided will depend on the particular circumstances, including the wishes of the nearest relative; some will not wish to receive detailed information, particularly in the aftermath of a sudden death, and such wishes should be respected. The Procurator Fiscal should be aware at an early stage of any religious or cultural issues associated with the death (Diversity Team guidance on Cultural Issues). If the nearest relative has concerns or objections regarding the post mortem examination, consideration should be given to accommodating their wishes, if to do so is consistent with a proper investigation. For example, in deaths where criminality does not arise, it may be possible, following consultation with the pathologist, to use a less invasive procedure or to restrict the examination. Procurators Fiscal should acquaint themselves with the general views of those who provide them with pathology services. In the case of objections based on religious or cultural beliefs it will be necessary to give careful consideration as to whether, and to what extent, those beliefs can be accommodated without compromising the investigation or a future prosecution. In certain cases it may be appropriate to discuss the options with the pathologist separately and to explain the views of the nearest relative.

In the face of sustained objection it may be appropriate to offer a meeting with the nearest relative (or representatives if there are separate interests within the family) to explain the need for a post mortem examination. Generally, there will

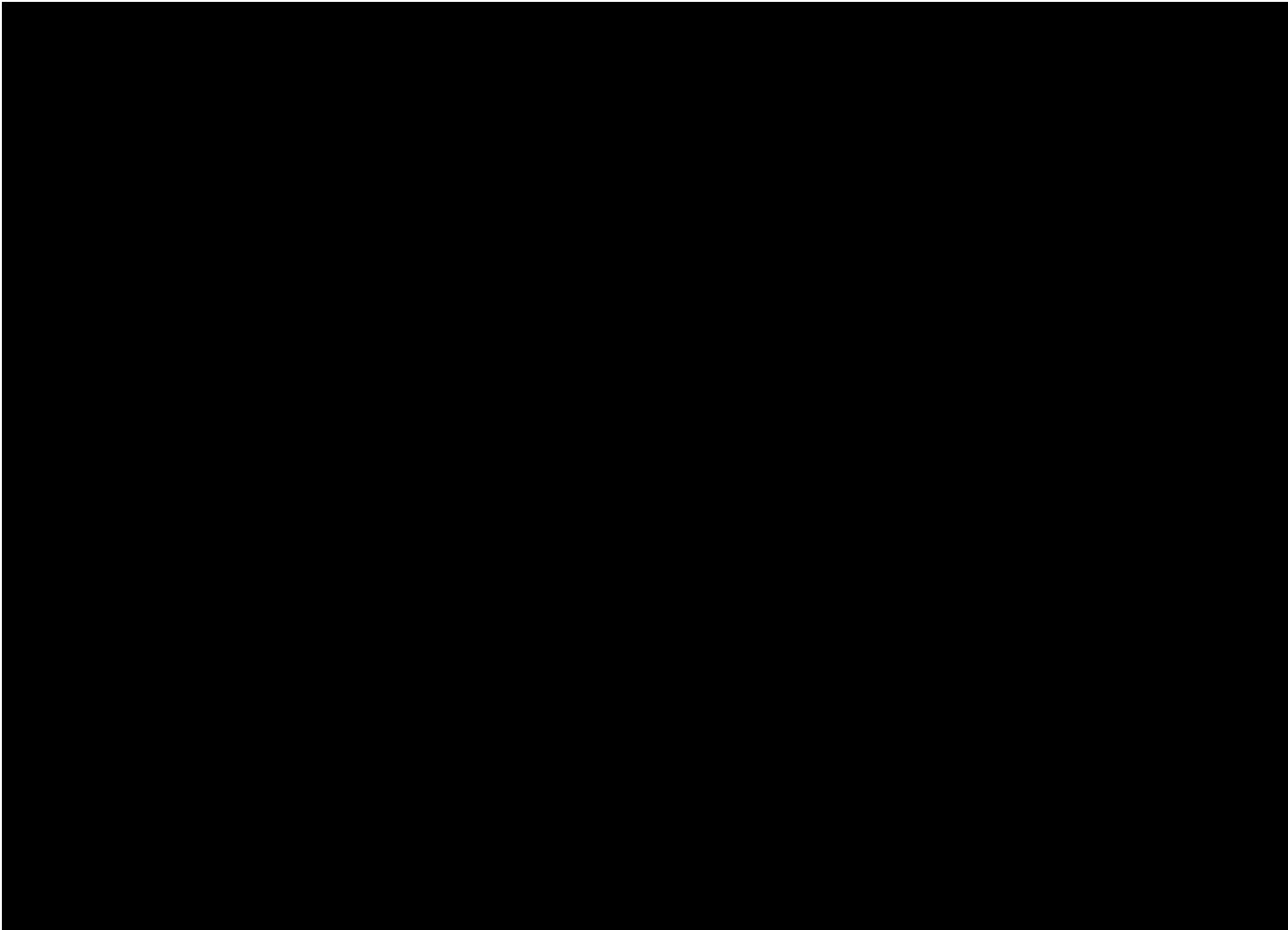
be insufficient time to arrange to do so in advance of the post mortem examination. The decision whether to offer a meeting for this specific purpose, and the timing of any such meeting, will depend on the circumstances of the case, including the potential for compromising an ongoing investigation. The section below on meetings with relatives provides further information.

**VIA can assist in any communication with the family.**

### **Organ Retention**

If organ retention is thought to be a reasonable possibility (following consultation with the pathologist) the PF should note the possibility of organ retention and establish whether the nearest relative wishes to be notified if this proves necessary. Where the nearest relative does not want to be kept advised the PF should indicate that if organ retention is required, arrangements will be made for the organ to be disposed of sensitively once the further analysis is completed. It will be important to confirm this in writing and to enable the nearest relative to return to the Procurator Fiscal should they wish to review their original decision not to be further consulted. VIA can assist in any communication with the nearest relative. [Post Mortem Examination Leaflet](#) - for bereaved relatives provides information on organ retention.

If retention has not been discussed and then becomes necessary there should be immediate contact with the nearest relative to notify them and to discuss the options for disposal. Full guidance on the subject of organ retention etc. is to be found at [Retention of Organs and Samples 08](#).



## **Meeting with Nearest Relatives**

Where a death is reported to the Procurator Fiscal a meeting should always be offered to the nearest relative where:

- there is likely to be a prosecution whether solemn or summary
- the death has resulted from a road traffic accident
- the death may have been suicidal
- a mandatory FAI or other Public Inquiry is to take place
- the relatives have particular cultural or religious needs in relation to the body of the deceased
- there is the possibility that a discretionary Fatal Accident Inquiry will be held.

The purpose of the meeting is to:

- to explain the Procurator Fiscal's role;
- to explain the possible outcomes of the enquiries;
- to advise on the role of VIA;
- to confirm the point/s of contact within the PF Office;
- to find out whether the family wishes to be kept informed about the progress of the case, in what way and what level of detail they want;
- to obtain the nearest relative's views, if relevant, re possible courses of action;
- to ascertain whether there is any wish for a Fatal Accident Inquiry to be held.

It is preferable to have no more than two people attending the meeting from COPFS, including the VIA Officer. In Road Traffic cases only the Procurator fiscal may, with the consent of the nearest relative, invite either the Reporting Officer or accident reconstruction investigator along to explain the circumstances surrounding the road traffic collision.

Where VIA is involved in the case a copy of the letter should always be sent to them.

If a nearest relative requires to be precognosced in relation to the circumstances of the death, every effort should be made to separate the meeting from the precognition. However, where nearest relatives request an FAI it may be necessary to precognosce them to ascertain the reasons for their request.

Care should be taken in planning for any meeting with nearest relatives in deaths investigations. Meetings should be held in a private room, preferably in quiet, pleasant surroundings where they can feel able to ask questions and hear explanations without interruption. Thought should be given about an appropriate time for a break, possibly with refreshments, particularly where the meetings is likely to be of some length. It is good practice to discuss the format of the meeting with them when they arrive.

**People in distress often have difficulties taking in everything they are told so that repetition may be important to aid their understanding.**

**Helpful guidance about Breaking Bad News is given at** Breaking Bad News - A Guide for Staff. In some cases where relatives are distressed it may be necessary to conclude the meeting before all relevant information has been given. In such cases arrangements should be made to see the relatives again, if they wish.

If the case is likely to give rise to criminal proceedings the Procurator Fiscal or member of staff should outline the procedure followed in criminal cases, including mention of appeals and the possibility of the court granting interim liberation pending disposal of an appeal. Procurators Fiscal must not advise nearest relatives of their intended recommendation to Crown Counsel in respect of proceedings or a FAI and must ensure that the relatives are not given any expectations which may prove to be false. Procurators Fiscal should also advise relatives that their Family Liaison Officer will introduce them to their VIA Officer at the early stage of any criminal prosecution, and that the VIA Officer will thereafter keep them informed about the progress of the criminal case, including any appeal. FLOs usually withdraw from such cases after Full Committal ([FLO Protocol - Precognoscer's Handbook > Victim Information And Advice > Annex 3](#)). Procurators Fiscal may find it helpful to refer to the Pack produced by the Scottish Government for families in homicide cases - [Information for Bereaved Relatives and Friends following Murder or Culpable Homicide](#).

If a nearest relative declines to attend for a nearest relative meeting and there is no other need for his or her attendance, a note should be made on the papers to record the absence and a letter should be sent. Care should be taken to ensure that this letter is carefully worded, is in plain English and takes account of the trauma that the death may have brought to the family. In the case of witnesses residing in England and Wales, a nearest relative meeting need not routinely be offered, but instead the position explained in a letter. In cases of particular sensitivity or complexity, the Procurator Fiscal may wish to offer a meeting and should consult the Area Fiscal.

In all cases where the Procurator Fiscal has held a meeting with nearest relatives during preliminary investigations into a death, a letter should be sent after the meeting noting the main issues covered in the meeting and advising of steps being taken by the PF in carrying out further investigations.

**Interpreters for bereaved relatives in court proceedings**



This section provides guidance to Procurators Fiscal concerning the provision of interpreting services for bereaved relatives who wish to attend court diets.

Procurators Fiscal will be aware that the Lord Advocate's Guidelines to Chief Constables which came into effect on 1 April 2002 (and which were issued with Crown Office Circular 6/2002 (Now withdrawn)) require the police to advise Procurators Fiscal of the interpreting and translation needs of bereaved relatives. This information should be included in both the death report and the criminal report.

In cases involving a death in which the police have advised that interpreting and translation services will be required by the deceased's bereaved relatives Procurators Fiscal should inquire whether the relatives in question wish to attend court to view proceedings. If so liaison with the relatives will be required to ascertain their requirements and consideration should be given as to the most appropriate way to meet their interpreting needs. This applies to cases in which criminal proceedings have been taken and to Fatal Accident Inquiries.

The approach to be taken will depend on the particular circumstances. In some cases a member of the deceased's family may be fluent in English and willing to attend court with the relatives to act as their interpreter. This may be the option which is most welcome to the bereaved relatives themselves and which will best meet their communication needs. If this is not possible or practical, however, the Procurator Fiscal will need to consider whether an interpreter should be instructed to attend court to assist the bereaved relatives involved. The issue of the language needs of the bereaved relatives should be addressed when reporting by precognition and the various options discussed. Crown Counsel's instructions should be sought as to whether one or more interpreters should be instructed to assist the bereaved relatives.

Procurators Fiscal are reminded that family members should never be allowed to act as interpreters for Crown witnesses while they are giving their evidence to the court.

In cases where it is decided to provide interpreting services for bereaved relatives, a meeting between the relatives and the interpreter will be required prior to the court diet to ensure that there is a language/dialect match. This guidance applies to cases involving community languages, foreign languages, sign language and lip-speaking.

"Bereaved relatives" should be taken to mean the parents, husband/wife (and/or partner) and brother or sister of the deceased. In cases in which the deceased has no close relative Procurators Fiscal will require to consider whether interpreting services should be provided to more remote family members who may be thought to have a legitimate interest. Such cases should be discussed with Crown Office Policy Division in advance of provision to assist in ensuring that a consistent approach is taken.

Procurators Fiscal should feel free to seek advice from Crown Office Policy Division at any time in the preparation process. Policy and practice in this area

will be kept under careful review and comments from Procurators Fiscal on the operation of the policy are welcome.

### **Pathology Clinics**

A scheme instituted by the Procurator Fiscal at Glasgow, offering "pathologist clinics" has been recommended to COPFS and was commended by the Independent Post Mortem Review Group. In 2001 this Group made recommendations to the Lord Advocate in relation to improving communication with bereaved relatives in the context of post mortem examinations instructed by the Procurator Fiscal. The initiative involves offering nearest relatives, in appropriate cases, a meeting with the pathologist who performed the post mortem examination, along with a member of the Procurator Fiscal's Deaths Unit who was involved in the investigation of the deaths. Generally, the opportunity to attend such clinics are offered in,

(a) Drug related deaths

(b) Deaths where there is a misplaced concern on the part of the nearest relative about the medical treatment received by the deceased.

These categories are not exhaustive. Procurators Fiscal must use their discretion and may offer such a meeting to any nearest relative where it is felt it would be of benefit.

Although such cases are not routinely referred to VIA, Procurators Fiscal may also involve VIA in any meeting with the consent of the nearest relative. The meeting is to be held at the conclusion of the investigation, usually where there is no possibility of criminal proceedings. It is a useful forum to ascertain whether there is a wish for a Fatal Accident Inquiry, and to allay any concerns harboured by nearest relatives about any medical aspects of the death.

It is appreciated there may be resource implications for Departments of Forensic Medicine and NHS pathologists who may require to travel to more rural offices. It is suggested that suitable arrangements should be devised at area level or between offices that share the services of the same pathologists.

### **Final Communication with Families**

In all cases where the Procurator Fiscal has held an interview with nearest relatives during preliminary investigations into a death, nearest relatives should be advised of the final decision or instruction. Even if relatives have indicated they do not wish to maintain contact about the case they should be sent a brief letter advising whether there are to be criminal proceedings, no proceedings or a Fatal Accident Inquiry. Thereafter, there need be no further contact. In criminal proceedings VIA will keep nearest relatives informed about case progress thereafter.

For those who have indicated that they do wish to be kept advised of progress in non-criminal cases, the letter should contain the PF reference number and/or a

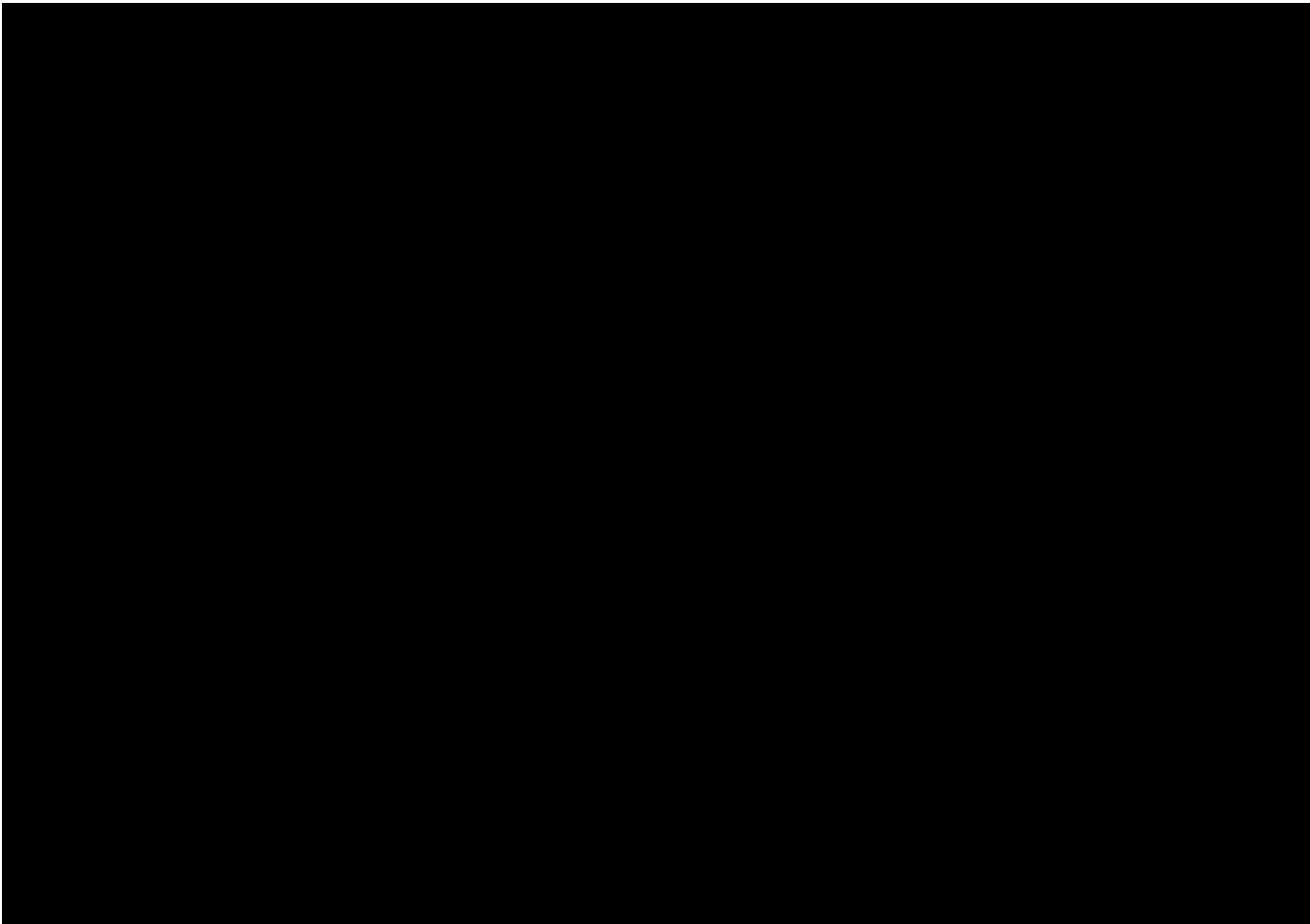
point of contact to enable relatives to make such enquiries as they desire, and should contain any available information as to the likely date of any FAI.

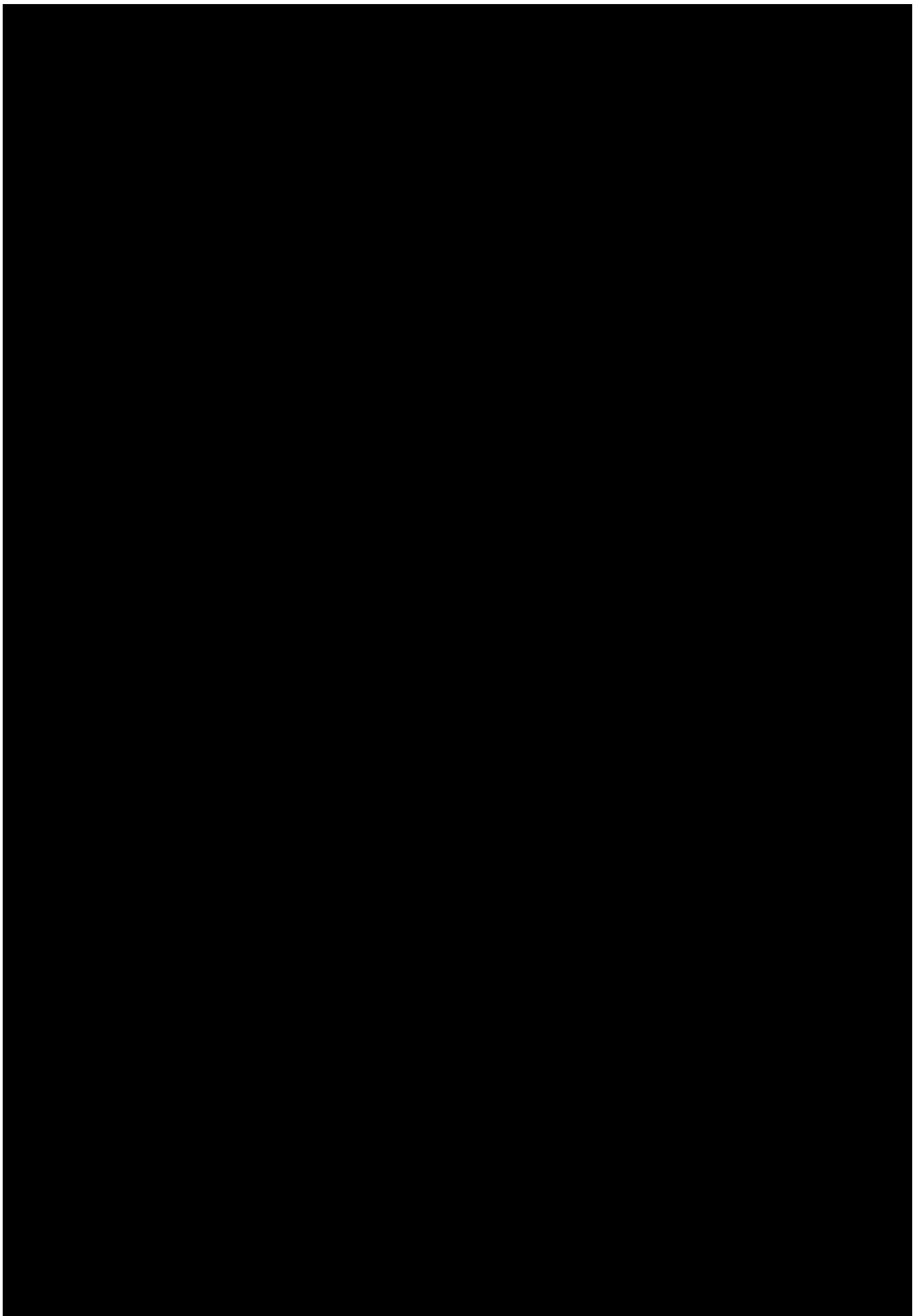
VIA should always be sent a copy of the final letter to indicate that the case is closed.

### **Contact during criminal proceedings**

The Procurator Fiscal responsible for the investigation of the death should liaise with the Legal Manager at the appropriate sitting of the High Court, or with the Procurator Fiscal conducting the trial in the Sheriff Court, to ensure that arrangements are in place to allow for the family of the deceased to attend court at all stages of the proceedings. VIA will already be in contact with nearest relatives in all criminal cases involving a death and can assist with any such arrangements. VIA also liaises closely with the Witness Service and can ensure that they are aware that the family will be in court during the trial.

In many instances the nearest relatives will be witnesses but there will also be occasions where they are not. VIA ensures that nearest relatives in all cases are advised about the progress of the case up to and including sentence and any appeal and that they are given as much advance notice as possible about any change of plea. The position is different in relation to post-sentence developments, such as breach of community service order or hearing for restoration of driving licence, since these are not dealt with by VIA. The Procurator Fiscal is expected to take responsibility for intimating any post-sentence developments in the case, including whether or not a subsequent FAI (either mandatory or discretionary) should take place.





## **Precognition and Interview of Witnesses 27**

Section 2 of the 1976 Act grants warrant to the Procurator Fiscal to cite witnesses for precognition in deaths which he or she is bound to investigate in terms of Section 1 of the Act. Section 1 lays a statutory duty upon the PF to investigate deaths in certain circumstances. Section 1 does not apply to a death in which there must be a Mandatory Inquiry where there has been a prosecution unless on the order of the Lord Advocate. Such a death would have been thoroughly investigated before that stage had been reached. The same usually applies to deaths where the Lord Advocate is satisfied that a discretionary Inquiry is to be held. Nevertheless the wording of the Act would imply that the PF must investigate all deaths where an Inquiry is mandatory unless there is to be a prosecution, when he or she is only bound to investigate if instructed to do so by the Lord Advocate after the prosecution. On the other hand, he or she is only bound to investigate other deaths after the Lord Advocate is satisfied that it is expedient to hold a discretionary FAI.

That being the case it is unlikely except in relation to mandatory Inquiries, that a warrant to cite for precognition will exist at the time when it is actually required.

Where the Procurator Fiscal decides to interview witnesses it is preferable to send notices requesting their attendance either in the style of Form F85 or by letter ([Style F85 - Precognition citation \(Deaths\)\(F85MIS.DOC\)](#)). If in the particular circumstances of a case it is necessary to use a form of citation this may be done. If it is necessary to precognosce witnesses in a case to which the 1976 Act applies, formal citation may be effected.

The Procurator Fiscal has discretion to decide on the appropriate location for an interview or precognition, having regard to the circumstances of the witness, the time involved and financial considerations. It may be appropriate to interview the witness at a police station or at the witness' home if it is appropriate.

## **Evidence**

### **Securing, Preserving and Releasing or Destroying Evidence**

In routine deaths there is unlikely to be any need to take possession of productions. However, where there is a possibility of criminal proceedings (other than for a minor Road Traffic offence), a full criminal inquiry including full seizure and retention of productions will be carried out. Reference should be made to guidance on Investigation of Road traffic and work related deaths regarding seizure and retention of potential productions. Between these two extremes a relatively small number of cases may require productions to be taken, either in relation to the deceased's identification or to the circumstances of the death.

In all cases, it is important that the Procurator Fiscal, to whom the circumstances of the death are reported, has full details of all items taken possession of either as productions or as property in connection with the death

inquiry. This ensures that, when nearest relatives are interviewed, the Procurator Fiscal is aware of the extent and nature of the property held and decisions in relation to the way the case is dealt with are made in the knowledge of the productions available.

A full and detailed listing of productions/property also ensures that instructions can be given at the appropriate stage as to disposal or retention. The free text area of the standard death report can be utilised to include a section describing productions, and an inserted section following the style of the production release note on a standard Police report can also be incorporated. This includes sufficient room to allow the form to be utilised as a production release note.

A standard approach has not yet been adopted across Scotland. Area Procurators Fiscal should agree with Police locally to have a list of productions included in a Death Report. Arrangements should be made to return all productions in non-criminal or FAI cases as soon as possible. Consideration must be given to the nature of the items concerned and whether returning them to nearest relatives is appropriate. The views of the nearest relatives should be sought on this matter.

### **Retention of productions including reports and disclosure to interested third parties.**

#### **Copy Productions**

Procurators Fiscal may receive a request from nearest relatives, or solicitors acting for nearest relatives, seeking copies of any sketch, plan, report or photographs prepared in connection with the investigation of a death. The normal practice, in both criminal and death cases, has been for the Procurator Fiscal to inform an interested party that there is no objection to a copy being made available by the author of the sketch, plan or report. The same has applied to photographs, with the Procurator Fiscal normally informing the interested party that he has no objection to the police supplying copies.

However, in death cases the importance of providing information to nearest relatives justifies a different approach. At the meeting with nearest relatives it is likely that they will be shown any sketch, plan or photographs, and reference may be made to reports obtained by the Procurator Fiscal. Should the nearest relatives request copies of these items, the Procurator Fiscal must assess whether any proceedings, either in contemplation or pending, may be prejudiced by such disclosure, in which case copies should only be made available at the conclusion of such proceedings. (copy post mortem reports can also be provided). Books of photographs will only have been copied if there are to be proceedings but good practice dictates that, in the event that there are no copies, the Procurator Fiscal should obtain them for the family, ensuring that their contents are not likely to be excessively distressing.

Nearest relatives may find the content of productions distressing. In some cases relatives may approach the Procurator Fiscal seeking a copy of a photograph of the deceased. This request should only be considered when any proceedings are

at an end and there will be no resulting prejudice. In such cases it should be fully explained how distressing this may be and what the possible implications are. This is particularly important where there has been a large degree of damage/disruption to the body. However, where a relative accepts the possible risks of viewing such a photograph there should be a presumption in favour of providing one. If possible, it should be suggested that the photograph should be forwarded to the GP where the relative can view it in a secure environment with appropriate support. Where the photograph is to be provided it should be contained within an envelope which clearly indicates that it contains a photograph of a dead body. This envelope should be contained within another sturdy and well-sealed envelope, personally addressed to the recipient.

### **List of Witnesses**

The position in relation to the provision of a list of witnesses is more complicated. If there is to be a Fatal Accident Inquiry, Procurators Fiscal will provide a solicitor acting for the nearest relative with a list of those witnesses who will be called to give evidence, and may provide copy statements.

Where there are no proceedings and a solicitor acting for a nearest relative requests witness details to enable him or her to investigate the possibility of civil proceedings, Procurators Fiscal should make the information available to the solicitor. If nearest relatives who are unrepresented request a list of names and addresses of witnesses, the Procurator Fiscal should not supply this. The concern must be that nearest relatives may contact witnesses to challenge them about their evidence. This concern can be particularly acute in cases where nearest relatives have difficulty in accepting evidence of fault on the part of the deceased. If, however, the nearest relatives persist in their request, the Procurator Fiscal should report to Crown Counsel for further instructions.

### **Disclosure of pathology report and other medical evidence**

Following discussions with the British Medical Association it has been agreed that Procurators Fiscal will co-operate as fully as possible in granting permission to pathologists to issue details of post mortem examinations to general practitioners. After each post mortem examination, the deceased's GP should receive a letter from the pathologist informing that a post mortem examination has been carried out on the deceased, stating also the cause and time of death, which the pathologist has certified, and that a report has been submitted to the Procurator Fiscal. Where a person has died in hospital and a post mortem examination has been carried out, the same letter should be sent to the Medical Director of the hospital. The Procurator Fiscal should instruct the police to ascertain the name and address of the deceased's GP.

Suitable arrangements should be made at the local level by the Procurator Fiscal for either the pathologist or the Procurator Fiscal's office to write to the GP or hospital.

If the pathologist receives a request for further information, the pathologist will in any case of doubt or difficulty seek the permission of the Procurator Fiscal

before disclosure. Procurators Fiscal should not permit such information to be disclosed if there is any question of criminal proceedings or a Fatal Accident Inquiry being prejudiced by the release of such information. Where a copy of the autopsy report is requested, the pathologist will inform the doctor that this may only be released with the consent of the Procurator Fiscal.

Where the Procurator Fiscal receives a request for a copy of the post mortem report from a person or agency with a legitimate interest in the circumstances of the death, he or she may provide a copy without reference to the pathologist. There should be a presumption in favour of providing a copy of the report. Examples of those with a legitimate interest are the nearest relatives, solicitors acting for the next of kin, insurance companies, the Criminal Injuries Compensation Authority, the War Pensions Agency and the Armed Forces (in the case of the death of a serviceman).

If Criminal proceedings are in contemplation or pending, the Procurator Fiscal must assess whether those proceedings might be prejudiced by disclosure of the report, in which case a copy should only be made available at the conclusion of proceedings. Where the request comes direct from the nearest relatives, it should be borne in mind that they may have difficulty in understanding or interpreting the report or may find the report distressing. Generally, there will be advantages in arranging for the relative's GP to assist in explaining and interpreting the autopsy report in a supportive environment. Of course, the agreement of the relative is a prerequisite of such an arrangement. However, if the nearest relatives do not wish to involve their GP the Procurator Fiscal should provide them with a copy of the report direct.

In certain circumstances it may be inappropriate to provide a copy of the full report. For example, where the pathologist has criticised the treatment received by the deceased or where the report indicates a suspicion of criminality but no further evidence in support is available.

Where a pathologist's report contains extraneous information, or an expression of opinion not within the specialism of the author, the pathologist should be asked to provide a version containing only factual and relevant information. The Procurator Fiscal should not provide a copy of the original report to the nearest relatives but should either await the revised report or simply apprise them of the facts of the death.

### **Expert reports**

Expert reports should not be provided to third parties without the consent of the author unless the report is likely to be evidence in a FAI. In a FAI situation, it is advisable that all interested parties and the Sheriff to preside at the Inquiry are given as much advance notice of the contents of such a report as possible. It is recommended that where reference is to be made to expert evidence, preliminary diet procedure should be adopted, to ensure that the evidence is used in a positive manner and is relevant to the perceived objectives of the Inquiry. It is important therefore that all reports and all documents and



productions referred to in such reports are made available to all relevant parties in advance of such a diet.

## **Instruction of Expert Evidence**

[REDACTED] Expert evidence will be of assistance in many other investigations, particularly those investigations which involve death of a person in care or custody or the death of a child. Technical evidence may be required in many cases, particularly industrial accidents. If a death is to proceed to a FAI, consideration should be given as to whether a motion to the Sheriff to appoint an Assessor would be appropriate.

From time to time it will be necessary to instruct experts in particular fields other than medical and scientific. Examples have been known of the Crown instructing experts in areas as diverse as archery, vehicle engineering, railway signalling and food safety. The principal problem is identifying what kind of expert or technical evidence is required and who would be the most appropriate person to provide that evidence. Obtaining expert and technical evidence can be a time consuming process and it is important to keep the nearest relative fully informed of the intention to obtain evidence and the progress made in obtaining the evidence.

COPFS does not currently maintain a list of "approved" experts and, in any event, such a list would be unlikely to cover all possible eventualities. There is however a Law Society list at <http://www.expertwitnessscotland.info/> . Accordingly it falls to the individual Procurator Fiscal to identify an appropriate expert in the circumstances of the case and to instruct him or her directly. Publications such as the Expert Witness Directory form a useful starting point and information may be available from appropriate trade or professional associations as well as obvious sources such as the police and the Health and Safety Executive.

The first process is to determine the circumstances of the case which give rise to questions that an expert witness can answer. That process may include technical evidence and it will be necessary to have witnesses available at an early stage to explain technical matters, so that a clear picture of what happened can be obtained. Expert evidence is only of value if related to the established circumstances. Once a clear picture of the circumstances and the issues involved has developed, a meeting with the nearest relatives should be arranged, to inform them of the facts as established, take their views and inform them of the next steps.

When an expert is instructed it is essential to reach a clear agreement about his/her remit and the rate of payment, which should always be committed to writing.

Based on the facts as established, questions for expert witnesses should be developed and these should be used to identify the area of expertise required. There is no doubt that identifying the appropriate expert can be difficult. There are a considerable number of sources of expert witnesses. It is better to find an expert witness who is considered to be an expert and is accredited as such by colleagues. Self-proclaimed experts should be considered with care. The reporting agency may be able to assist. The law society has a list of expert witnesses on their website. In the meantime colleagues throughout the country, and in Glasgow and Edinburgh in particular, and Aberdeen in relation to offshore and diving deaths should also be able to assist.

Contact the identified expert by telephone and find out if the area of expertise is appropriate. Write a letter of instruction. This should summarise the circumstances and set out the questions which require answered and the specific concerns raised by the Family. Details of what rate of payment for services to be charged by the expert should be sorted out at this stage. (See the [Finance Manual](#)). A deadline for production of a report should be specified. No documentation should be sent at this point. Once the expert has agreed to undertake the report, then copies of all relevant documentation should be sent with the post mortem report.

Once the report has been received, its terms should be considered and a decision taken as to whether a supplementary report is required. The nearest relative should be made aware of the contents of the report(s) and their views obtained. There may be merit in providing a copy at this stage to identified interested parties for their comment although reporting to Crown Office should not be delayed to allow another expert to be commissioned on their behalf.

### **Expert Witness Fees**

An expert witness is a witness who gives an opinion based on facts or other matters which he/she has investigated and who has been called into a case for that express purpose. The decision as to whether or not a witness qualifies as an expert depends not only on his/her qualifications but also on the nature of the evidence which he/she gives. If the Procurator Fiscal considers that a witness whom he/she has precognosed should be treated as an expert witness - or if a witness claims that he/she should be treated as an expert witness ? a statement to that effect should be included in the notes at the beginning of the precognition. This will assist the Coffin deciding whether the witness is to be classified as an expert witness. The Procurator Fiscal should give his/her opinion as to whether expert fees are justified and establish what fee has been agreed with the witness.

Expert witness fees are not fixed. The Fee, for each attendance, should be negotiated between the Procurator Fiscal and the expert witness and agreed in advance of attendance at Court.

