

Attorney General for Northern Ireland

Guidance by the Attorney General for Northern Ireland

pursuant to

Section 8 of the Justice (Northern Ireland) Act 2004



No. 2

**HUMAN RIGHTS GUIDANCE FOR
FORENSIC SCIENCE NORTHERN IRELAND**

Laid before the Northern Ireland Assembly on 8 May 2013

HUMAN RIGHTS GUIDANCE FOR
FORENSIC SCIENCE NORTHERN IRELAND

INTRODUCTION

1. Human rights standards are designed to make life better for individuals and communities and they should not be, and not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.

2. This guidance is without prejudice to the requirement on all public authorities to comply with their obligations under section 6 of the Human Rights Act 1998.

THIS GUIDANCE IS ADDRESSED TO FORENSIC SCIENCE NORTHERN IRELAND

3. While based on international standards of human rights law, this guidance is intended to be focused on those areas of most relevance and assistance to Forensic Science Northern Ireland. Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. It will be revised in the light of adjustments

in human rights standards and both the experience of those to whom it is addressed and the public.

INTERNATIONAL STANDARDS

4. This guidance is based on international human rights standards, in particular the following instruments:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- the International Covenant on Civil and Political Rights;
- the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;
- the Council of Europe Committee of Ministers Recommendation No. R (87) 15 Regulating the Use of Personal Data in the Police Sector;
- the Council of Europe Committee of Ministers Recommendation No. R (92) 1 on the Use of Analysis of Deoxyribonucleic Acid (DNA) within the Framework of the Criminal Justice System;
- the Council of Europe Committee of Ministers Recommendation No. R (99) 3 on the Harmonisation of Medico-Legal Autopsy Rules;
- the United Nations Convention on the Rights of the Child.

DELAY

5. Timely disposal of criminal cases is the entitlement of the entire community including defendants, victims and witnesses. Timeliness is at the centre of a properly functioning criminal justice system and is a

requirement of international human rights standards. For Forensic Science Northern Ireland (FSNI) the application for these principles should take the following form.

6. The requirement of timely disposal applies to the whole trial process, including the pre-trial stages when FSNI are likely to be heavily involved. All persons in FSNI whose work may affect the timeliness of criminal proceedings should carry out their work with due care and efficiency. Those involved in the assignment of work should ensure they have the necessary information from the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service (PPS) to prioritise work in accordance with the guidance set out in the next two paragraphs.

7. Whether or not any lapse of time becomes unreasonable depends upon the circumstances of each case: matters should usually be assessed as a whole and the need for expedition balanced against the proper administration of justice. When work which may affect the timeliness of criminal proceedings is given to FSNI prioritisation should occur so that its limited resources are directed to where the need for expedition is greater. To that end work should normally, subject to serious public safety considerations and subject to any overriding direction from a court, be prioritised as follows:
 - a. Priority should be given to work where the accused is a child in custody;

 - b. Priority should next be given where the accused is an adult in custody;

 - c. Priority should next be given where the accused is a child;

- d. Priority should next be given where delay has already occurred particularly where this delay has been caused by the action or inaction of any public authority.
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8. A record should be kept of the approach to prioritisation adopted for each FSNI case. FSNI staff must carry out an assessment of all FSNI work which may affect the timeliness of criminal proceedings, applying the prioritisation set out above, save in cases where the individual factors result in a different approach being taken. An example would be a case processed contrary to the priority set out above because a witness had a shortened life expectancy. Reasons for such individualised treatments should be recorded.
 9. FSNI should ensure that during the trial process FSNI staff do not contribute to unnecessary delay by failure to meet timetables set by the court. FSNI, PPS and the PSNI must communicate effectively with one another to ensure that this does not occur. If delay is anticipated or has occurred FSNI should inform the PPS and the Northern Ireland Courts and Tribunals Service case management officer accordingly in order to facilitate case management.
 10. FSNI should publish predictive indicators for the time taken to complete standard types of work. If the difficulty or complexity of work being undertaken by FSNI results in work taking longer to do than is normal or expected then, provided the work has been performed diligently with proportionate resources devoted to it, such delay should not be regarded as unreasonable.
 11. Where unreasonable delay has been caused by FSNI then responsibility for this should be accepted promptly and notified to the PPS together with, if the relevant work remains undone, a detailed

timetable for its completion. FSNI should not accept responsibility for delay which has been caused by other public authorities, and should advise the PPS of any delay which is wrongly attributed to FSNI.

12. The zeal to avoid delay should never result in a diminution in the quality of scientific work.

STORAGE

13. It is important that evidence and materials are obtained, stored and processed in ways that ensure the integrity of the data obtained and the reliability of the analysis for any legal proceedings. The respect for fundamental rights and freedoms, notably the right to privacy and the principle of non-discrimination, must be guaranteed during the collection, processing and storage of personal data or DNA profiles.
14. Personal data (including DNA profiles) undergoing automatic processing should be maintained, processed and stored in a way which complies with the ISO 17025:2005 standards and the United Kingdom Accreditation Service (UKAS) requirements. FSNI should have processes which reflect these standards and which ensure as far as practically possible that materials and information are:
 - a. obtained and processed fairly and lawfully;
 - b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
 - c. adequate, relevant and not excessive in relation to the purposes for which they are stored;

- d. accurate and, where necessary, kept up to date;
 - e. preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored;
 - f. not kept for longer than is necessary for the purpose for which they were stored.
15. A system of regular communication with the PPS and PSNI which enables FSNI to be aware of the status of cases is necessary for compliance with standards 16-20 as set out below.
16. Samples or other body tissues taken from individuals for DNA analysis should not be kept after the final decision in the case for which they were used, unless it is necessary for purposes directly linked to those for which they were collected.
17. The result of DNA analysis and the information so derived should be deleted when it is no longer necessary to keep it for the purposes for which it was used.
18. The results of DNA analysis and the information so derived may, however, be retained where the individual concerned has been convicted of serious offences against the life, integrity or security of persons.
19. Where a child has been convicted of a serious offence and the DNA profile is retained, a review must take place after ten years to assess whether the continued retention by FSNI is proportionate.

20. DNA samples may be stored for longer periods where the person from whom the sample was obtained so requests, or when the sample cannot be attributed to an individual, for example when it is found at the scene of an offence.
21. Materials and information must be protected against accidental or unauthorised destruction or loss. Similarly, the prevention of unauthorised access, communication or alteration must be ensured.
22. Where biological samples are taken from the deceased measures must be taken to ensure appropriate storage. The dignity of the deceased person must be respected and human remains (including samples of biological material) should be stored and returned with dignity and respect. Where human remains (including samples of biological material) are retained family members should be informed and human remains should not be kept for longer than is reasonably necessary.

AUDIT

23. It is essential that any scientific analysis which may be used for the purposes of legal proceedings is carried out to the highest professional standard and is conducted with knowledge, skill and integrity. Independence, adherence to scientific integrity and the maintenance of a clear record of the scientific process is essential to public confidence in the criminal justice system and to the adequate protection of the rights of both victims and defendants.
24. A scientific ethos of objective deduction and neutrality as to conviction or acquittal are essential elements of the independence required for the administration of justice. Compliance with the relevant

professional standards ISO 17025 (and ISO 17020 where appropriate) should ensure that this is achieved.

25. Adherence to ISO 17025 (and ISO 17020 where appropriate) will ensure the integrity and reliability of the testing process, for example, in the prevention of cross contamination, integrated and sequential recovery and analysis of data, use of appropriate controls and the maintenance of records.
26. When providing information to be used in a prosecution timely disclosure of all results and records must be provided to the PPS, including details of any dispute or ambiguity, rather than just the consensus view reached. Results should be provided to the PPS whether they support the prosecution or not or are ambiguous.
27. A full and complete written or electronic record of the testing process must be maintained.
28. Crime scene material should be retained for replicate testing whenever practicable.
29. Facilities and procedures should enable independent testing of forensic material upon the request of the defence and allow access to analysis and raw data.
30. Where testing is likely to consume or destroy the original evidence and the defence asks to observe the testing, this should be facilitated as far as possible.
31. Storage conditions should be determined with regard to the perishability of exhibits. Clear guidelines should ensure the

appropriate handling, packaging and tracking of movement of exhibits is a priority for staff.

32. FSNI must carry out its operational duties without prejudice to victims or suspects. Processes preventing potential conflicts of interest between staff members and victims or suspects should be in place and observed. Similarly, processes preventing the cross contamination of materials from victims and suspects through strict separation of materials for testing should be in place.

SAFETY: LIFE AND BODILY INTEGRITY

33. Handling, packaging integrity and the tracking of storage and movement of exhibits are key processes in ensuring both the integrity of exhibits and, vitally, the safety of those working in proximity with such materials and those outside FSNI who may come in contact with them.
34. Care must be taken to ensure the safety of individuals dealing with dangerous or hazardous materials or otherwise coming into contact with them. FSNI must ensure compliance with its statutory responsibilities under current health and safety legislation.
35. Health and safety issues must be regularly reviewed at senior management level. A health and safety report must be compiled regularly and circulated among all staff.
36. Regular engagement with other forensic providers is required to ensure the refreshment of practice in respect of health and safety issues.

PROPERTY

37. Property rights should be respected with regard to the retention of personal belongings. An appropriate assessment of the value of retaining material for evidentiary purposes should be made as weighed against the significance of return of the object, for the individual. Liaison with the PSNI should take place so that items of no evidential significance, or no longer possessing evidential significance, are returned to those who own them and wish their return unless there are legal and proportionate reasons for retention.

GENERAL

38. FSNI should ensure that the above guidance is circulated to all staff to ensure awareness of and adherence to, the above standards.
39. It is similarly important that the general public and other criminal justice organisations are aware of the standards to which FSNI is held. This guidance should be made available on the FSNI website to enable others who may have an interest in, or who may be affected by, the work of FSNI to view the guidance.
40. Regard must be had to this guidance when making or reviewing contractual or other agreements with other statutory agencies.

REVIEW AND MONITORING

41. Difficulties encountered in the application of this guidance by FSNI should be notified to the Attorney General as soon as possible.

42. The Attorney General will formally seek the views of FSNI on the revision or amendment of this guidance annually. It is open to FSNI to suggest revision or amendment of this guidance at any time.

A handwritten signature in black ink, appearing to read 'John F Larkin', with a horizontal line extending to the right.

John F Larkin QC
Attorney General for Northern Ireland

