

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. 3

**HUMAN RIGHTS GUIDANCE FOR THE
STATE PATHOLOGIST'S DEPARTMENT**

Laid before the Northern Ireland Assembly on 8 May 2013

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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 THE STATE PATHOLOGIST'S DEPARTMENT

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 the State Pathologist's Department. 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 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 the State Pathologist's Department (SPD) 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 the state pathologist's Department are likely to be heavily involved. All persons in the SPD 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 Public Prosecution Service (PPS) the Coroner's Service, the Police Service of Northern Ireland (PSNI) and Forensic Science Northern Ireland (FSNI) 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 the SPD 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.

8. A record should be kept of the approach to prioritisation adopted for each case. Reasons for exceptional or individualised prioritisation must be recorded.
9. The SPD should ensure that during the trial process SPD staff do not contribute to unnecessary delay by failure to meet timetables set by the court. The SPD, FSNI, the PPS and the PSNI must communicate effectively with one another to ensure that this does not occur. If delay is anticipated or has occurred the SPD should inform the PPS and the Northern Ireland Courts and Tribunals Service case management officer accordingly in order to facilitate case management.
10. The SPD should produce and make available upon request predictive indicators for the time taken to complete standard types of work. If the difficulty or complexity of work being undertaken by SPD 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 the SPD 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. The SPD 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 the SPD.
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.
14. 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.
15. 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 (where this is the family's wish) returned with dignity and respect. Where human remains (including samples of biological material) are retained family members should be informed through the Coroner's Office and human remains should not be kept for longer than is reasonably necessary.

AUDIT

16. 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.

17. 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 such as the code of practice and performance standards for forensic pathology in England, Wales and Northern Ireland should ensure that the integrity and reliability of the examination process is achieved.
18. 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.
19. A full and complete written or electronic record of the examination process must be maintained.
20. Facilities and procedures within SPD should enable an independent post-mortem and independent testing of material upon the request of the defence and allow access to analysis and raw data.
21. Where testing is likely to consume or destroy the original evidence and the defence asks to observe the testing or post mortem examination, this should be facilitated as far as possible.
22. The SPD 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

23. The safety of staff and the general public is of vital importance. Appropriate procedures and safety precautions ensure protection against risk to life or wellbeing from pathogens or potentially dangerous substances.
24. Care must be taken to ensure the safety of individuals dealing with dangerous or hazardous materials or otherwise coming into contact with them. SPD must ensure compliance with its statutory responsibilities under current health and safety legislation.
25. Health and safety issues must be regularly reviewed at senior management level. Where new health and safety guidance is issued, this must be distributed and where necessary discussed with staff.

RELIGION

26. Requests for consideration of religious preferences should be given serious consideration. Specific requests may be accommodated only where safety, independence and the integrity of the scientific process will not be compromised as a result.

GENERAL

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

REVIEW AND MONITORING

30. Difficulties encountered in the application of this guidance by the SPD should be notified to the Attorney General as soon as possible.
31. The Attorney General will formally seek the views of the SPD on the revision or amendment of this guidance annually. It is open to the SPD to suggest revision or amendment of this guidance at any time.



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