

# The Royal College of Pathologists submission of 19 October 2022

## PE1911/U: Review of Human Tissue (Scotland) Act 2006 as it relates to post-mortems

Thank you for the update and the further question/point for clarification. We have discussed this again at RCPATH and at the Scotland Regional Council of RCPATH. In response to the question – “The Committee is keen to understand whether decisions not to return tissue samples are predominantly due to the inadequacy of facilities, staffing levels and capability to facilitate the process or based on best practice. The Committee notes that the return of tissue samples is common practice in other parts of the UK. The Committee would welcome further clarification from you on the basis of decisions not to return of tissue samples”, then no, this is not the only/main reason, as was stated in our initial reply under section 3.

So, we would state again that on balance: “Retention of small tissue samples and glass slides for microscopy as part of the clinical record would also seem appropriate, with the option of routinely returning these to relatives risking the loss of valuable future material for examination and adding considerable complexity to the consent process, which is already complicated and carried out in situations of extreme relative distress – especially when involving the death of a child. So, on balance, we would not support legislative change as suggested in the petition.”

The added reality check of under resourced facilities and staff is also clearly a factor but not the defining one, albeit resolution of such deficiencies in service is not expected in the near future. It is worth noting that relatives who do request return of tissues/slides in non-forensic cases in Scotland, are likely to be dealt with sympathetically by local post mortem services, however such discussions/applications are not generally offered routinely – for the reasons given above.

Finally, with reference to the situation in England, there are some differences and indeed variations around the country in the way this topic is handled for non-forensic PMs. While there are some more definitive mechanisms in some areas, this is only used in a small proportion of cases and the actual return of samples is likely to be small (less than 10%). For example, If and when a pathologist takes tissue at

a coroner's post mortem, the family may be subsequently approached by the coroner's officer to ascertain their preferences for disposal of the tissue (and slides), whether that be retention as part of the medical record or for audit, research or educational purposes, return to the next of kin or the body for burial / cremation, or respectful disposal according to local policies. If the family require the tissue to be returned to them, this can only happen once the coroner's enquiries are complete. If the case is rapidly reported and finalised with no requirement for an inquest, the return of tissue can happen within days or weeks or even months. If there is an inquest (which can take months or longer to arrange), the return of tissue is often delayed by months if not longer (common given the current huge backlog). This can result in delays to the funeral, or sometimes the tissue has to be returned to the body separately after burial or cremated separately.

Regarding the use of the word "Unascertained" and the possible replacement with "Uncertain", then we would strongly disagree with this proposal. They are very different in their meaning, with the former implying that the objective has not been looked at and thus at this point is not ascertained an outcome/conclusion. "Uncertain", however implies there is an element of doubt in the findings and implies that the objective has been dealt with.

Therefore, "unascertained" is the appropriate term in this context.

I hope this is useful to the committee.