Chief Coroner

GUIDANCE No. 26

ORGAN AND TISSUE DONATION

1. The purpose of this guidance is to help coroners with decision-making in situations that involve organ and tissue donation.

Legal basis for the involvement of a coroner

2. A coroner will only be involved in a potential donation where there is a duty to notify them of the donor's death[1]. In cases where that duty does not arise, a coroner does not need to be notified of the death and has no authority to raise an objection to donation.

3. Coroners cannot authorise donations; there must be prior consent from the donor (or from someone able to make the decision on the donor's behalf) before a donation can proceed. In England and Wales, most adults are deemed to have consented to donation unless they have opted out (although families' views will still be considered).[2]

4. During a coroner's preliminary inquiries and investigation, the coroner has the right to possession of the body (in the sense of having lawful control over it)[3] and no organs or tissues may be removed without the coroner's consent[4]. Consequently, if a donor/family have given consent, but the coroner objects, there can be no donation.

The timing of the approach to the coroner

5. Until it is verified that a proposed donor has died, the coroner's jurisdiction is not engaged. However, coroners are often approached before a donor's death to give an indication of lack of objection, so that the complex arrangements for donation can be made. Pre-emptive contact by medical professionals is entirely proper. If they had to wait until after a donor's death to consult the coroner, donations would be frustrated because of the limited time in which they can occur after death. The coroner's indication before death can be taken as the coroner's decision at the moment of death (unless in the meantime new, relevant information comes to light, in which case the coroner should be contacted again). The death of the donor should then be reported to the coroner in the usual way.

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[1] See The Notification of Deaths Regulations 2019 and the Ministry of Justice guidance on the regulations (link: https://www.gov.uk/government/publications/notification-of-deaths-regulations-2019-guidance).
[2] The HTA Code of Practice – Code F (part 2) provides helpful information about consent in in relation to deceased donation: https://content.hta.gov.uk/sites/default/files/2020-11/Code%20F%20part%202.pdf
[3] *R v Bristol Coroner ex parte Kerr [1974] QB 652.*
[4] See section 11(2) Human Tissue Act 2004 and section 14 Human Transplantation (Wales) Act 2013.

6. Coroners should usually be contacted about organ and tissue donation during the working day. Medical professionals generally make their decisions on donation during working hours, and not all decisions are urgent, as clinicians should routinely be considering donation as part of end-of-life care. If coroners are contacted at the earliest opportunity, they should have time to make enquiries that they could not make out of hours (e.g. with the police, pathologists etc).

7. Although coroners are required to be available at all times to make urgent decisions concerning investigations into deaths[5], they should not be contacted out of hours about potential donations, unless absolutely necessary.

8. Senior Coroners may wish to liaise with the acute healthcare trusts in their areas to agree protocols for communications about organ and tissue donation. An example of the information coroners might like to ask trusts to provide by email when making an initial referral is in the attached Annex.

The coroner's decision

9. A coroner's investigation will usually include examination and/or testing of the deceased's body, so organ and tissue donation can place a limit on the investigation's scope. It is for the coroner to decide what investigation is necessary, desirable and proportionate to enable his or her statutory functions to be discharged[6], and in coming to that decision the coroner is entitled to consider the wider public impact of objecting to donation. It is well understood that for each organ that cannot be donated because of an objection, there will be a person on the organ transplant list who is affected, and who could possibly die before an organ is available. Bereaved families who support donation may also find comfort in the knowledge that their loved one's death has helped others. Facilitating organ and tissue donation, where possible, is therefore in the public interest.

10. When deciding whether to object to a donation, the coroner will need to consider how likely it is that the potential donor organ caused or contributed to the death. It might help coroners to bear in mind that:

    a) organ transplantation is concerned with the donation of healthy organs, whereas coroners are mainly interested in either diseased or damaged organs; and
    b) it may be possible to obtain evidence that the organ was healthy from the transplant surgeon[7] or organ recipient.

11. Coroners may find it useful to ask the relevant clinician the following questions:

    a) was a trauma CT scan or ultrasound scan undertaken, and if so, did it display damage to the organ or surrounding tissues?
    b) have any of the haematology or chemical pathology investigations indicated that there is organ dysfunction?
    c) has monitoring indicated instability that may indicate organ dysfunction?
    d) are any drugs being prescribed either to treat or support this particular organ?
    e) Is the clinician confident that the relevant organ is functioning normally and has not contributed to death?

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[5] Regulation 4 of The Coroners (Investigations) Regulations 2013.
[6] *R (Hambleton and others) v Coroner for the Birmingham Inquests (1974) [2019] 1 W.L.R. 3417* at [48]
[7] See section 9 of the Criminal Justice Act 1967 and rule 23 Coroners (Inquests) Rules 2013.

12. It is possible for coroners to set conditions when deciding not to object. For example, the coroner could require:

    a) a statement from the treating clinician confirming that the organ was functioning normally and reviewing any imaging;
    b) impressions to be taken of any bite marks before the organ retrieval;
    c) photographic images to be taken of the organ removal;
    d) a statement from the clinician undertaking the organ retrieval;
    e) the presence of a pathologist at the organ retrieval;
    f) request to the donation authority that, if the organ is not used for a donation, it is returned to the pathologist to examine;
    g) support for an approach to the donation authority to trace the donor organ recipient to confirm the organ is functioning normally.

13. For effective governance of the decision-making process, discussions between medical professionals and the coroner/coroner's officer should be clearly documented, and the coroner's decision should be communicated in writing (i.e. via an adobe form, email or coroner referral portal) as soon as possible. Coroners should agree with their local hospitals which method should be used.

Deaths involving a potential homicide

14. The need for a Home Office post-mortem examination will not always prevent organ and tissue donation.

15. In a homicide prosecution, conviction requires proof of the offence to the criminal standard, and coroners will need to undertake a detailed consideration of any factors that have the potential to compromise the conclusions of the post-mortem examination and impact on the prosecution. However, each case will be fact-specific, and coroners should carefully consider the scope of their investigations and only object to donation where objection is justified. Medical professionals can often provide contextual medical history that may greatly assist in the coroner's deliberations and discussions with others. For example, there is a substantial difference in considering donation in the case of a young fit person with a single blow to the head and an elderly person with comorbidities undergoing a multiparty assault with several weapons. In the former case, multiorgan donation might be possible, whilst in the latter, any donation would probably compromise the police and death investigations.

16. The homicide investigation team will often leave their contact details with the treating clinicians and ask to be notified of any death. If donation is contemplated, it is best practice for the coroner and Senior Investigating Officer (SIO) to discuss the coroner's thoughts on donation. SIO's can often provide more information about the mechanism of injury and inform the coroner's decision as to whether an objection should be raised. If there is any doubt, it might help to arrange a three-way conversation between the coroner, SIO and Home Office pathologist.

17. Senior Coroners may find it helpful to agree a protocol for communications with their local police services about donation referrals in which the police have an interest.

18. No police officer, regardless of rank, can countermand a coroner's decision on organ donation. If the police consider it necessary, it is open to them to seek urgent judicial review in the High Court.

19. It may be possible for a coroner to allay an SIO's concerns about donation by setting conditions to the coroner's lack of objection (see paragraph 12 above).

Tissue Donation

20. The criteria for tissue donation are substantially different to organ donation, with longer intervals of time during which a donation may occur. Tissue donation may also have less potential impact on a police or coronial investigation than organ donation, depending on the facts. If a coroner decides to object to organ donation, the coroner might consider whether tissue donation would require a similar objection, and if not, could discuss that possibility with the medical team.

Details of organ recipients

21. Coroners often appreciate being given details of the organ recipients. Some coroners may choose, with the agreement of the family, to read out at an inquest into the donor's death a letter describing the recipients, and to offer public thanks.

HHJ Thomas Teague KC
CHIEF CORONER

16 June 2023

Annex

- Name; age; date of birth; address; contact details of next of kin; and contact details of the relevant contacts at the hospital.
- Date and circumstances of admission to hospital (including the ambulance service description of scene and the handover details, where applicable).
- Admission bloods where possible, and any toxicology results undertaken by the hospital.
- Treatment and progress since admission.
- Relevant past medical history and relevant medication.
- Doctor's view on medical cause of death.
- Whether any suspicious circumstances have been excluded.
- Contact details for the investigating police officer, where relevant.
- Whether the donor was in police or state detention, including detention under the Mental Health Act.
- Whether there are any safeguarding concerns.
- Whether the cause of death occurred at work or as a result of employment.
- Reason for referral to the coroner.
- Organs/tissues requested.
- Whether or not family/next of kin have any concerns in relation to the death, for example about the treatment given.