

## ***Impact Case Study***

### **UoA 22: Social Work and Social Policy**

#### **Historical Enquires – holding the UK authorities and Police Service of Northern Ireland to account; informing stakeholders, changing policy and influencing public debate**

#### **Summary of the impact**

Professor Patricia Lundy's research, which began in 2005 and continues today, has:

1. Directly led to the Minister of Justice commissioning HM Inspectorate of Constabulary (HMIC) to investigate the Police Service of Northern Ireland's Historical Enquiries Team (PSNI/HET).
2. Directly led to the Northern Ireland Policing Board (NIPB) holding the PSNI to account; and a reassessment of the Board's own procedures.
3. Directly led to the resignation of HET's Director and Deputy Director, suspension of all military case-reviews, complete overhaul of HET, and policy changes in how PSNI/HET investigates historic crimes.
4. Directly led to Committee of Ministers holding the UK government to account with regards to fulfilment of its obligations deriving from European Court of Human Rights (ECHR) judgements and HET Article-2 compliance.
5. Directly led to reopening inquests, legal proceedings and informing stakeholders.
6. Directly created critical public debate about the future.

#### **Underpinning research**

The underpinning research is a body of work stretching back to 1998 which focused on how postconflict societies attempt to deal with the legacy of conflict and human rights abuses. This impact case study concentrates on **an in-depth critical analysis of the Historical Enquiries Team of the Police Service of Northern Ireland (PSNI/HET)**. The research, funded by a number of research awards and developed with the engagement of a range of beneficiaries, was carried out solely by Patricia Lundy. The research commenced August 2005 and remains ongoing. During this period Lundy was a Senior Lecturer at the University of Ulster, promoted to Professor in September 2012. The policy approach to dealing with the legacy of Northern Ireland's conflict and human rights abuses has been fragmented and highly contested. In response to victims' demands and directives from the European Court of Human Rights (ECtHR), the UK Government implemented a 'package of measures'. The HET is a key component of the 'package'. Its remit is to re-examine all deaths attributable to the Northern Ireland conflict (1969-1998) and to bring a 'measure of resolution' to bereaved relatives by answering unanswered questions. Lundy was granted unfettered access to the HET by the then Chief Constable Sir Hugh Orde. This demonstrates recognition of her expertise and knowledge of this highly sensitive topic. The specific aims of the research were to:

- a) Examine to what extent HET can be considered effective according to standards and benchmarks derived from the UK's obligations under Article 2 of the European Convention on Human Rights (ECHR) (i.e. independence, effectiveness, promptness, and transparency).
- b) Assess to what extent HET was perceived by victims and other stakeholders as meeting their needs.
- c) Explore and identify deficiencies, structural impediments, obstacles and obstructions to fulfilling its remit.
- d) Advance the understanding and practice of transitional justice processes in a leading liberal democracy.

The methodology included observation of HET day-to-day operations, interviews with HET staff and a wide range of beneficiaries, and in-depth document analysis.

### Research findings

The research found differentiation in treatment and deficiencies in HET/PSNI investigations. It exposed anomalies and inconsistencies in the investigation process where agencies of the state were involved compared to non-state or paramilitary suspects. It raised questions about the ability of the HET to undertake ECHR Article-2 compliant investigations (i.e. independent, effective, prompt and transparent) in cases involving state agencies and/or cases obligations deriving from ECtHR judgements. The research found further a lack of independence associated with the role of intelligence gatekeepers and the influence of 'corporate or institutional memory' arising from the rehiring of retired police officers in connection with HET investigations.

This led to further serious questions being raised about the lack of oversight, and practice, of rehiring retired police officers as part of HET. This development fed into wider intense political debate over PSNI policy of rehiring retired officers, and commitment to policing reform. The research undertaken by Lundy showed that access to 'the truth' was limited by HET procedures and victims had to know the 'right questions' to ask. The quality and depth of reports improved significantly when NGOs, legal or other representatives assisted victims' families. The Unionist community, and bereaved families of the British army, were shown to be less well represented.

This lack of representation influenced the quality of HET reports and access to justice. In contrast to official claims, interviews with victims revealed dissatisfaction with HET output and a failure to answer some families' questions. **Her Majesty's Inspectorate of Constabulary Inspection (HMIC) Report published July 1 2013, and commissioned by the Minister of Justice in response to Lundy's research (Source 1 & 2), confirmed all of Professor Lundy's research findings (Source 2).** HMIC concluded that the HET did treat state involvement cases differently as a **matter of policy**, that HET acted outside the law and its practice was inconsistent with the UK's obligations under Article 2 ECHR. HMIC concluded that many of its findings had been made in 2009 by Lundy; HMIC's report extensively quoted her articles 'Can the Past be Policed?'(d); and Research Brief (a), as corroborating evidence in making their case.

A **direct policy change** resulting from Professor Lundy's research is HMIC recommended the HET should: "immediately withdraw paragraph 6.19 of its *Operational Guide*; draft a revised policy approach to state involvement cases; seek the DPP for Northern Ireland agreement to it; and then publish it to HET members and other interested parties".

### References to the research

Available online: [http://eprints.ulster.ac.uk/view/author\\_or\\_editor/1586.html](http://eprints.ulster.ac.uk/view/author_or_editor/1586.html)

- a) Lundy, Patricia (2012 April) Research Brief: *Assessment of HET Review Processes and Procedures in Royal Military Police Investigation Cases*.
- b) Lundy, Patricia (2011) Paradoxes and Challenges of Transitional Justice at the 'Local' Level: Historical Enquiries in Northern Ireland, *Contemporary Social Science*, 6 (1), pp. 89-106.
- c) Lundy, Patricia (2010) Commissioning the Past in Northern Ireland, *Review of International Affairs*, LX (1138-1139), pp.101-133.

- d) Lundy, Patricia (2009) Can the Past Be Policed? Lessons From the Historical Enquiries Team Northern Ireland, *Law and Social Challenges*, 11, pp. 109-171.
- e) Lundy, Patricia (2009) Exploring Home-Grown Transitional Justice and Its Dilemmas: A Case Study of the Historical Enquiries Team Northern Ireland, *International Journal of Transitional Justice*, 3, pp. 321-340.

Indicators of research quality include the following peer-reviewed prestigious external awarded grants: British Academy Large Grant, Sole applicant, £70,000, 2007 to 2008, 'A critical analysis of the HET, PSNI' and Leverhulme Senior Research Fellowship, £38,891, 2009 to 2010, 'A critical analysis of the HET, PSNI: consolidation of research'.

### Details of the Impact

The HET is promoted by the PSNI and Northern Ireland Office (NIO) as an effective mechanism capable of meeting victims' needs and delivering its objectives. **Lundy's research has provided the only evidence-based independent and academic critical assessment of the HET.** The research provides empirical evidence which qualifies and/or challenges official claims of efficiency and whether objectives have been met. The reach and significance of this research and pathways to impact are as follows, presented in accord with the impacts summarised in Section 1 above. **Impact 1, 2 & 3:** The Northern Ireland Policing Board (NIPB), the main policing accountability mechanism in Northern Ireland, has used Lundy's research to monitor, scrutinise and hold PSNI/HET to account (Source 1). Since 2009 Lundy has been invited to present her research findings to the Human Rights and Professional Standards Committee (hereafter HRC) of the NIPB.

A measure of Lundy's contribution is shown in a letter of thanks from the HRC which acknowledges 'the contribution of the research and the gratitude of the Human Rights and Professional Standards Committee' (letter on file in Research Office). As a result of Lundy's engagement with the NIPB, the Chief Constable (PSNI) and HET Senior Management have been called before the Board to respond to concerns raised in her research. **As a direct result PSNI stated that changes have been made to HET processes and procedures.** This is evidenced in confidential documentation, 'HET Current Situation Report', April 2009 and letter to NIPB from David Jones, Assistant Chief Constable, CS 49/09, 30 March 2009 (copies on file), and is further documented in the UK Government Submission to the Council of Europe Committee of Ministers, 2009 (Source 3). In March 2012, Lundy's most recent research findings were presented to the NIPB (Source 1). On April 5th 2012 in a private meeting with the NIPB, and during a full public session, the Chief Constable was obliged to respond to concerns raised in Lundy's research (Source 1). This led directly to the Minister of Justice, at the request of the Chief Constable, commissioning an investigation into the work of the HET by HMIC. In a public statement the Chief Constable said: *'I absolutely recognise there are public concerns and concerns around families in regard to this [Lundy's] report... I do acknowledge the public concerns and the need to reassure families and take an independent look at this'* (Source 1).

Lundy's evidence-based research was pivotal in holding the PSNI to account and compelling the Chief Constable and Minister of Justice to commission the HMIC inspection. This is evidenced further in HMIC Terms of Reference which state that the inspection is: *'to determine whether HET investigation processes in RMP cases, as outlined in the research conducted by Patricia Lundy, meet the requirement benchmarks and standards'* (Source 2). **HMIC's inspection report confirmed all of Lundy's research findings** (Source 2). Stephen Otter of HMIC said in his report: *'Dr Lundy had presented a report that at the time was made out to be untrue. What is indefensible is that she did make these findings in 2009, so for four years nothing was being done to address those findings and I*

*do find that that is very difficult to believe. I do think [Lundy] deserves an apology from the chief constable on behalf of the PSNI' (Source 9: article 'HET exposed').*

As noted, a **direct policy change** resulting from Lundy's research is HMIC recommended the HET should: "immediately draft a revised policy approach to state involvement cases and seek the DPP for Northern Ireland agreement to it" (Source 2). The Policing Board has established a Working Group to implement HMIC's recommendations, the HET's Director and Deputy Director resigned, all HET military case-reviews have been suspended and there is a complete overhaul of HET underway. In this regard, HMIC recommended an independent oversight panel be established to oversee and scrutinise in the public interest all aspects of HET work. This is an important and unprecedented **structural change** to the PSNI/HET investigation of historic cases which resulted directly from Professor Lundy's research. However the fate of the HET is still playing out. The Chief Constable has informed the NIPB that he has "**not ruled out suspending the work of the HET**"; and "**all options are open**" (Source 1). NIPB has stated that it will use Lundy's research as a case study to assess its own processes internally. **Impact 4 & 5:** Lundy's research has been **used to hold the UK authorities to account in the Committee of Ministers (CM), Council of Europe** (Source 3). Since 2008/9 the research has informed and assisted the CM in oversight and monitoring of the UK government's compliance with obligations which have arisen as a result of ECtHR judgements involving Article 2 cases (Source 3). Article 2 of the ECHR protects the right to life and places a duty on a State to investigate suspicious deaths by means of an Article 2-compliant process (i.e. independent, effective, prompt and transparent). The pathway to impact was direct engagement and sharing of research findings with 'users' at various stages of the research.

Over a number of years the research findings have been disseminated by means of public and private meetings, closed roundtables, briefing papers and briefing sessions with a wide range of beneficiaries. As a direct result, Lundy's research has been used to significantly inform submissions to the CM by leading human rights NGOs (Committee on the Administration of Justice and Pat Finucane Centre) and victims' groups (Relatives for Justice) (Source 3). **The UK authorities were obliged to respond to the concerns raised in Lundy's research and this is detailed in submissions to the CM (Source 3).**

Lundy has been invited to brief the Department of Foreign Affairs (DFA) Irish Government; and there have been frequent follow up meetings with senior officials which directly fed into DFA submissions to the CM. Of huge significance is that **Lundy's research has led to debate in the Northern Ireland Assembly (Committee for Justice), and questions being raised by NIBP and HMIC, as to whether the UK authorities and/or HET/PSNI "misled the Committee of Ministers" (Source 1, 2 & 4).** Further evidence of reach and significance is that Lundy was invited to present expert witness testimony (based on her research) to the **Commission on Security and Cooperation in Europe hearing on 'Prerequisites for Progress in Northern Ireland', also known as the Helsinki Commission, sitting in Washington** (Source 5).

The HET has been promoted by the CM as a model for other countries to emulate and could be adopted by more Council of Europe states investigating alleged state killings. This led a delegation of Russian human rights groups and lawyers advising on Chechnyan cases to visit Ulster to be briefed by Professor Lundy on her HET research and findings. (<http://www.socsci.ulster.ac.uk/irss/231111.htm>).

**Impact 5 & 6:** Lundy's research has contributed to and significantly renewed the on-going public discussion and policy debate about how best to address the legacy of conflict in NI. The research has been widely reported in the media as headline news (TV and radio) and generated considerable public debate and opinion pieces on national social media sites (Source 8), and also international

sites including the highly influential Irish National Caucus in Washington (Source 9). For the past 30 years the Irish National Caucus based on Capitol Hill, Washington, has been a highly effective independent lobbying organisation working successfully to influence congressional policy on NI. In addition, **the NI Commission for Victims and Survivors (NICVS) selected Lundy's research publication 'Can the Past be Policed?' as one of five key policy documents and related reports that have informed the debate in the area of truth, justice and acknowledgement to date'** (Source 6). The influence on policy debate is further evidenced in the use of Lundy's work in a NIO consultation report on how to deal with the past (Source 7), and in submissions by political parties, victims groups and human rights NGOs to official consultations on dealing with the legacy of the past (copies on file). The research is currently feeding directly into NI's inter-party talks dealing with parades, flags and the past, led by former White House US special envoy Richard Haass (Source 9: article 'Trying to pre-empt Haass'). Professor Lundy has been invited to meet with the 'Haass Talks Team' of one of NI's main political parties for discussions around the forthcoming inter-party talks. Through pathways to impact, including sustained direct engagement with stakeholders, Lundy's research has directly impacted on a wide range of beneficiaries. It has informed individual victims, justice campaigns and the legal profession seeking redress for victims both domestically and internationally and NGOs demands for alternative 'truth' and justice processes. Her work has directly informed legal submissions to the Attorney General (NI) to re-open inquests, legal proceedings (Source 9; article 'Suing NI Police') and campaigns for public inquiries (<http://www.bbc.co.uk/news/uk-northern-ireland-18520216>).

#### Sources to corroborate the impact

- 1) Northern Ireland Policing Board minutes of meetings (2009 – 2013). See <http://tinyurl.com/pyb72j3> for 31 references in meetings to Lundy's research.
- 2) Her Majesty's Inspectorate of Constabulary (HMIC), *Terms of Reference for the Inspection of Historical Enquiries Team and Inspection of the PSNI HET* (July 2013). See <http://tinyurl.com/mves8m7> pg. 1-2.
- 3) Council of Europe, Committee of Ministers (for the most recent NGO submission to the Committee of Ministers and UK Gov Response). See <http://tinyurl.com/pqqxpuw> pgs. 5 & 21.
- 4) Northern Ireland Assembly, Committee for Justice, Official Report (Hansard), *Policing Issues: Briefing by the Chief Constable*, 19 September 2013. See: <http://tinyurl.com/nkxtgoa> pp.30-35.
- 5) US Helsinki Commission (Commission on Security and Cooperation in Europe), *Web video link of Lundy's expert witness testimony records*. See <http://tinyurl.com/nvygeu7>
- 6) Commission for Victims & Survivors, *Comprehensive Needs Assessment, 2010* <http://www.cvsni.org/images/policy-research/pubs/CNA-Phase-One-Sept-2012.pdf> p. 87.
- 7) Northern Ireland Office (NIO), *Government Response to Consultation on "Dealing With the Past in Northern Ireland: Consultative Group on the Past Report"* 2010 (pp. 30-41), <http://tinyurl.com/ny9x2s5>
- 8) Extensive media links and social media electronic sources e.g. <http://eamonmallie.com/2012/04/who-is-hiding-more-in-northern-ireland-the-government-or-the-paramilitaries/>

9) Irish National Caucus and Irish Peace Foundation Washington. See <https://web.archive.org/web/20130831025021/http://www.irishnationalcaucus.org/category/historical-enquires-team-het/>