

DR PATRICIA LUNDY
UNIVERSITY OF ULSTER
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RESEARCH BRIEF: ASSESSMENT OF HET REVIEW PROCESSES AND PROCEDURES IN ROYAL MILITARY POLICE INVESTIGATION CASES

INTRODUCTION

This paper examines the HET's review processes and procedures in Royal Military Police (RMP) investigation cases (hereafter RMP cases). RMP cases involve the fatal shooting of over 150 civilians by the British army between 1970 and September 1973.¹ In November 2011 the HET had completed 36 RMP case reports.² This paper sets out research findings based on the analysis of twenty-four HET reports, relating to seventeen individual RMP cases.³ As discussed later, there are frequently multiple drafts of reports. The paper focuses on an 'independent team' set up by the HET to examine all RMP cases. The team is made up of retired police officers from outside Northern Ireland. A number of issues, about the way in which the HET conducts investigations in RMP cases, are considered. Of particular note are apparent anomalies and inconsistencies in the investigation process where State agencies (in this case the military) are involved, compared to non-state or paramilitary suspects. This raises questions about the ability of the HET to undertake independent, impartial, effective investigations in cases involving State agencies.

BACKGROUND

The HET was presented to the Committee of Ministers by the UK government as part of a 'package of measures' which professes to fulfill its obligations under Article 2 of the ECHR. Article 2 requires an independent, effective, prompt and sufficiently transparent investigation into deaths implicating State agencies.⁴ The Court has specified that with respect to cases involving State agencies, those responsible for deaths must be made properly accountable. In order to attain accountability, an investigation must be effective. Any deficiency in the investigation process, which undermines this, is unlikely to comply with Article 2 standards.

With this in mind, the paper examines the following aspects of HET investigation processes in RMP cases:

- 'Pragmatic approach'
- Interviews under caution
- Pre-interview disclosure
- Pre-prepared written statements

- Robustness of interviews
- Equality of treatment
- Editing and changes to reports
- Effectiveness of reviews
- Tracing & Verification of illness
- Policies and procedures
- Accountability

CONTEXT

The Saville Inquiry revealed that between 1970 and September 1973 an informal agreement (hereafter Agreement) existed between the Chief Constable of the RUC and the GOC of the British army about the conduct of investigations in fatal shootings involving the military.⁵ The Agreement specified that soldiers suspected of involvement in a fatal shooting episode would be questioned by the Special Investigations Branch (SIB) of the Royal Military Police (RMP); and the RUC would take responsibility for interviewing civilian witnesses and all other aspects of the investigation. These arrangements meant that soldiers involved in fatal shooting incidents were rarely interviewed by the RUC and consequently any opportunity for independence was negated. An RUC policy at the time directed that the RUC should forward all available evidence to the RMP prior to an interview taking place with soldiers.⁶ In effect the RMP rarely received witness statements before military personnel were interviewed. The interviews appear to have been conducted informally with no assessment of criminal responsibility. The role of the RMP officer seems to have been simply to record the facts as described by the soldier, rather than to probe or question with a view to ascertaining whether or not the action had been justified or whether the soldiers' actions were lawful. The procedure appears to have been to question soldiers as witnesses, rather than to interrogate them as suspects, thereby dispensing with the need for formal cautions. The adequacy of RMP investigations was examined in the Saville Inquiry; the following evidence from a military witness captures the statement-taking process: *"It was not a formal procedure. I always wore civilian clothing and the soldier was usually relaxed. We usually discussed the incident over sandwiches and tea."*⁷

In 2003 these arrangements were judicially reviewed in the Kathleen Thompson case.⁸ Sir Brian Kerr, Lord Chief Justice of Northern Ireland, concluded that investigation into Mrs Thompson's death was not effective and it is questionable whether the Chief Constable of the RUC had the legal authority to delegate the critical responsibility of interviewing soldiers to the RMP. It is worth quoting at length what Sir Brian Kerr LCJ stated, "...the soldier who effectively discharged the shot which caused the death of Mrs Thompson and those who were with him at the time were interviewed by a member of the Royal Military Police. I do not consider that this satisfied the duty imposed on the police at the time to properly investigate this fatal shooting. In my view it was not open to them to delegate that critical responsibility to another agency such as the Royal Military Police. Quite apart from that however, the fact that each of the interviews cannot have lasted any more than half an hour; the

fact that clear discrepancies appear in the statements made, discrepancies which have not been the subject of further challenge or investigation, are sufficient to demonstrate the inadequacy of the investigation into the death of the deceased... By any standard it is clear that the investigation into the death of Mrs Thompson was not effective... He went on to say, "even allowing for the constraints that might have obtained at the time and the difficulty in visiting the locus where the shooting happened, I am satisfied that a more rigorous examination than in fact took place ought to have occurred. It is therefore clearly demonstrated by the applicant that this investigation was not adequate". This raises concerns about the appropriateness of more than 150 RMP investigations conducted under the above impugned arrangements, which are currently under review by the HET.⁹

In June 2007, a number of human rights NGOs and legal representatives held a meeting with senior HET management to discuss unsatisfactory review reports in a number of RMP cases and other related matters.¹⁰ The HET accepted that it 'had dropped the ball' and acknowledged deficiencies in the reports. It was agreed that all completed and concluded RMP case reports, which had been forwarded to families, would be recalled. HET further agreed that future reviews would take into account the ineffectiveness of RMP original investigations and this would be reflected/acknowledged in reports to families. A form of words to this effect was proposed by an NGO in a position paper. This is an important point; the HET has been commended for revealing inadequacies in RMP investigations in its reports.¹¹ It is not clear why the HET did not include this crucial information in earlier reviews, despite the information being in the public domain.¹² As discussed later, the reports subsequently completed differ significantly in content and conclusions; and a form of apology is offered by some individual soldiers. The subject of tracing was also raised. The HET accepted that it had limited success in identifying, tracing and interviewing suspects and witnesses in RMP cases and acknowledged that this had the potential to undermine public confidence in the HET. Up to that point only one soldier had been identified, traced and interviewed by HET. Assurances were given that procedures would be reassessed.¹³ Internal documents written after the above HET/NGO meeting reveal considerable debate over identifying, tracing and interviewing military personnel. The following was stated in one such document, "the HET needs to ensure that any policy change does not have a detrimental impact on our relations with the MOD... not only in terms of day-to-day co-operation but also public disquiet."¹⁴

The HET subsequently set up a 'special independent team' to deal with all RMP cases. The independent team is made up of retired police officers from outside Northern Ireland. This is the context to the current briefing paper.

CURRENT POSITION

Independence

Previous research by the author raised a number of concerns generally about the independence of the HET and the role of retired RUC officers.¹⁵ While the issue of independence is extremely important, it is not the main focus of this current briefing paper. Nevertheless, it is important to note that the HET has recently undergone significant changes to its processes and structural relationship with the PSNI. From

2009 HET refers cases (where realistic evidential opportunities exist) back to the Serious Crime branch (“C2”) of the Crime Operations Department. This raises a number of concerns which are reflected in a joint submission by the Committee on the Administration of Justice (CAJ) and Pat Finucane Centre (PFC) to the Committee of Ministers (CM) February 2012.¹⁶ The submission expressed deep concern that since CM assessment of the general measures in 2009¹⁷ a number of developments significantly undermine the HET’s capacity to carry out the work it was deemed capable of doing. Concerns were expressed about the independence and effectiveness of the process underpinning reports prepared by the HET. Whilst some families have received a satisfactory measure of resolution from the HET, CAJ and PFC do not accept that it is an operationally independent unit of the PSNI and have some concerns about HET’s capacity to conduct effective independent Article 2 compliant investigations where state actors may have been involved in a death. It was noted that without reference to such limitations the HET could be promoted as a model for other Council of Europe states. The submission further stated that “it would be premature for the Committee to close its examination of the issues addressed in Interim Resolution CM/ResDH(2007)73” and “formally requested the reopening of scrutiny by the Committee of Ministers of General Measures relating to the HET in the ‘McKerr group of cases’.”¹⁸

HET Investigation Practices and Procedures:

HET has a number of processes and procedures that it adopts in RMP cases.

1. The ‘Pragmatic Approach’

The ‘pragmatic approach’ refers to HET interviews of soldiers involved in fatal shootings conducted ‘informally’ or not under caution. The soldier is interviewed as a witness, rather than cross-examined as a suspect, thereby dispensing with the need for formal caution. The ‘pragmatic approach’ appears to be a recent development in HET procedures and as far as can be established is specific to RMP cases.¹⁹ The HET has stated that, ‘the methods used for identification, tracing and interviewing military personnel are the same as those employed by the police service’; RMP cases are ‘treated as per the guidelines of the Police and Criminal Evidence (NI) Order’.²⁰ There are very clear codes of conduct and standards that govern criminal investigations. The research indicates that the HET appears to have departed from the accepted standards in RMP cases. It is not within the scope of this briefing paper to detail numerous examples; the following abstracts from recent HET reports are illustrative.²¹

- HET procedures in RMP cases are outlined as follows:

“The question as to whether the HET should interview soldiers who were involved in shooting incidents whilst on duty in Northern Ireland is considered on a ‘case by case’ basis. Usually, but not exclusively, the determining factor will be around the thoroughness of the original investigation, especially the way in which interviews were conducted by the military, and whether the original interviewers had prior knowledge of any allegations that may have been levelled against the soldiers. Another major consideration is the evidence that was tendered by the soldiers or their representatives at the

inquest, and most importantly whether there is any evidence available now that would not have been available to investigators at the time.”

The HET report goes on to acknowledge the inefficient original RMP investigation in this particular case.

“Very careful consideration was given in this case to re-interviewing soldiers ‘A’ and ‘B’ under caution. Crucial aspects of the case, albeit known to investigating authorities at the time, were apparently not used to challenge the versions of events given by the soldiers. The account given by the various civilian witnesses (which are at odds with what soldier ‘A’ said) is a prime example.”

In spite of this, the HET report goes on to offer justification for adopting the ‘pragmatic approach’:

“It is the view of the HET that but for the fact that the Chief Crown solicitor at the time determined that the actions of soldier ‘A’ did not amount to criminal negligence..., the re-interviewing of soldier ‘A’ under caution would have been appropriate.”

The HET report goes on to say, *“this pragmatic approach was adopted specifically to give the HET maximum opportunity to obtain as much information as possible for the benefit of [the] family. **People who are interviewed under caution as ‘suspects’ are typically either extremely guarded in what they say, or exercise their right not to say anything at all.**”* [Emphasis added].

- Taking into consideration the earlier discussion about the deeply flawed nature of RMP investigations and Sir Brian Kerr LCJ ruling in the Thompson case (2003), and acceptance by the HET that clear discrepancies appear in the statements made, it is unclear why the HET took the decision not to interview the soldier under caution. The RUC at the time were clearly of the opinion that the shooting was unlawful and strongly recommended prosecution of the soldier in question.
- It appears that the HET decision to interview the soldier as a witness (and not as a suspect) fails to challenge and/or reinforces the original procedural inadequacies. Perhaps with the best of intentions in mind, the HET justify this approach as; *“A classic dilemma’. – no information for the families, or adopt a pragmatic approach in the pursuit of some answers for them.”*
- This implies a ‘truth recovery’ process. However, the HET cannot offer the guarantees and/or incentives deemed necessary to encourage ‘truth recovery’ i.e. immunity or amnesty. In the absence of such guarantees suspects would run the risk of self-incrimination.
- Participating in such a ‘pragmatic process’ does not appear to reveal any greater level of substantive information than previously available in the original papers. Statements tend to be a repetition of the original argument advanced in the RMP interview. The process does however offer the soldier an opportunity to bolster his original statement by plugging any gaps in his defence and to include some additional descriptive self-serving detail.

- Importantly, the research found inconsistencies in HET decision-making to interview military suspects under caution or 'informally'. In another RMP case where the DPP also directed that charges should not be brought against a soldier, a different approach was adopted. In this case the soldier was interviewed in the presence of his lawyer at their offices under caution.
- **Tracing and Verification of Illness:**

In a number of cases the HET were unable to identify and trace soldiers responsible for the fatal shooting of civilians and/or key military eyewitnesses.

In some instances, where soldiers have been identified and traced, ill health is a factor in the decision not to interview the suspect under caution or otherwise.

In one instance the HET state that the suspect (soldier B) "is suffering from dementia and a heart condition and was unable to assist with the review." But the report goes on to give some limited detail about an interview that seems to have taken place; including soldier B's expression of regret.

Importantly, it is evident that the verification of illness (i.e. medical evidence) of soldiers directly involved in fatal shootings in RMP cases is not always confirmed and/or sought by the HET. The process involved is not transparent.

It was confirmed in a recent meeting with Dave Cox (HET Director) and other senior staff that the HET do not always seek verification of illness with regards to soldiers directly involved in fatal shootings in RMP cases (i.e. medical evidence).²² In addition, further evidence is provided by a member of the legal profession who recently received written confirmation from the HET that medical evidence was not sought in his client's (RMP) case which involved the death of an eleven year old boy (copy of letter on file with the author).

Issues to be considered include:

- In order to comply with Article 2, investigations must be effective and transparent. In this regard the 'pragmatic approach' raises serious concerns.
- There are very clear codes of practice, standards and procedures which govern criminal investigations. The HET appear to depart from the accepted standards and justify this by calling it a 'pragmatic approach'. This raises an issue as to whether the HET is acting outside its authority and powers.
- The nature and conduct of 'informal' interviews (sometimes conducted in the soldier's own home) is not clear.²³
- The research also found inconsistencies in HET decision-making whether to interview military suspects under caution or 'informally'.
- More generally, the 'pragmatic approach' appears to be a recent development in HET procedures and as far as can be established is specific to RMP cases. This raises questions about equality of treatment and procedural impropriety; some suspects appear to receive more favourable treatment than others.

- Differentiation in treatment raises questions about the HET's impartiality in conducting investigations into cases concerning State agencies.
- Legal advice is required to determine whether a 'pragmatic approach' could prejudice any future prosecution. And/or whether this amounts to an abuse of process.
- Are families aware of the risks (if any) in adopting an "informal/pragmatic" approach?
- Is there full transparency in respect of this process?
- How are illnesses verified? The NIPB might wish to seek clarification.
- What does the 'pragmatic approach' deliver (compared to interviews under caution)?
- In view of these concerns, should RMP investigations be brought to the attention of the European Court for consideration?
- The DPP/PPS decision not to prosecute also raises concerns which require further scrutiny.

2. Interviews Under Caution

In RMP cases where soldiers are interviewed under caution the investigation processes and procedures also raise a number of concerns.

- **Pre-interview disclosure:**

The HET states in RMP case reports that, *"there is a legal obligation placed upon the HET to serve on those representing an interviewee a pre-interview disclosure package. This consists of all existing evidential documentation and other material that is relevant to the case."*²⁴

In response to a FOI request about pre-interview disclosure the HET made the following points; *"Where the HET decides to interview after caution (as a potential suspect) the lawyers who represent them make it clear that they require pre-interview disclosure of all relevant material held by the HET so that they can properly advise their clients, especially as the events in question happened, in some cases, over 40 years ago."*²⁵

The FOI response goes on to say; *"Under the Criminal procedures and Investigations Act 1996, the HET is **under no obligation to reveal the prosecution case to the suspect or their legal representative before questioning begins.** However, the Court of Appeal has held that if the police do not provide **sufficient information** to enable a solicitor properly to advise his client, the solicitor is entitled to advise his client to refuse to answer questions under caution."*²⁶ [Emphasis added]

It would appear that the HET has taken, in some cases, a very wide interpretation of 'sufficient information'.

Importantly, there is evidence to indicate that the 'package' includes contemporary or new witness statements made by individuals who witnessed the death/incident but did not make a statement to the police at the time. It is

my understanding that the witnesses, the families, NGOs and/or lawyers who enabled the new witnesses to come forward, were not informed by the HET that new statements would form part of a 'pre-interview disclosure package' to solicitors representing soldiers. In a recent meeting with Dave Cox (HET Director), senior staff and the author, it was confirmed that new witness statements are included in the 'pre-interview disclosure package'.²⁷

It is of considerable concern that there appears to be inequality in treatment where State agencies (in this case the military) are involved, compared to non-state or paramilitary suspects. There are examples in paramilitary related historic cases where suspects have received significantly less fulsome pre-interview disclosure.²⁸ There is no clear rationale for this less favourable differentiation in treatment.

- **Pre-Prepared Statement:**

When soldiers are interviewed under caution it is in the presence of their solicitor, recorded, and generally in his/her offices. The soldiers are voluntary attendees. Under these circumstances the HET state that "they are treated as per the guidelines of the Police and Criminal Evidence (NI) Order."²⁹

An analysis of HET reports reveals that at the start of interviews soldiers present the HET with a pre-prepared written statement. These tend to be carefully crafted detailed statements which have benefited from the wide pre-interview disclosure package and several months preparation. Pre-interview disclosure is likely to have an effect of memory recall and/or jogging memory. It appears that the value of soldiers' statements in terms of the level of additional information revealed (or answering unresolved questions) is limited. Statements tend to be a repetition of the original argument advanced in the RMP interview, but with any gaps carefully plugged, and some additional self-serving personal details about the individual. The process offers the soldier an opportunity to bolster his original statement and defence.

The pre-prepared statements appear to depart from standard practice and procedures in a number of ways. The statement has the advantage of weeks or months in preparation, in advance of a HET formal interview.

- **Interviews/ Robustness/ Editing:**

An analysis of a sample of case reports indicates that some HET interviews appear to lack robustness and inconsistencies are frequently not adequately challenged. By way of illustration, the following comments are taken from HET reports:

*"Soldier A accepted that he shot 'John' in the back, but was adamant that he was turning towards him when he fired. He said the fact that the exit wound had come out the front of his body at angle supported what he was saying."
[John is not the victim's real name]*

This statement does not appear to have been challenged and/or followed up by the HET; if it was, it is not apparent in the report.

Another HET report states: *“There are several differences in what Soldier D said to the RMP during the ‘statement taking exercise’ and what he told the HET in a formal interview under caution nearly 40 years later. A detailed critical comparison of a version of events recorded for one purpose against one given so long afterwards for an entirely different reason would, in the view of the HET, be invalid.”*

It is not clear why the HET did not feel it valid to challenge the inconsistencies in statements; and why the purpose is described as “entirely different”.

Importantly, the actual questions put to suspects and answers during HET interviews are not revealed. The content of interviews is edited by the HET and appears to be summarised; this will be addressed further below. In some instances the extent of the interview amounts to one page and a half in HET reports. The processes and procedures are not transparent.

- **Drafts, Changes to HET Reports:**

It is not clear how in one report the wording of an account given by a soldier to the HET, about his direct involvement in and recollection of a fatal shooting, changed in a redrafted report. The interview was not under caution and it was not recorded. The wording in the report is a summary based on a senior investigating officer’s notes and recollection (or interpretation) of what was said during the interview. The following direct quotes from the original and redrafted report show changes which appear to legally bolster the soldier’s defence.

The direct quotes have been removed to protect the report/victim from being identified.

It is not clear who directed the changes and what the process or procedures involved and what explanation there could be for changing it in this manner whether under caution or otherwise.

- **Policies and Procedures**

In response to a Freedom of Information Request,³⁰ the HET confirmed that it does not have a written policy or a procedural document for identifying, tracing and interviewing soldiers involved in fatal shootings.³¹

Decisions to interview under caution or not (for example) are made on a case by case basis. The senior HET officer heading up the RMP Cases Team appears to have sole responsibility for such decision making.

There is no current Memorandum of Understanding between HET and MOD on matters pertaining to identification, tracing and conduct of interviews with military personnel.

This raises concerns about standards and procedures, decision making and transparency.

Questions to be considered:

Interviews under caution raise a number of concerns as indicated above; in particular that the investigation process and procedures appear to depart from accepted standards.

- Does this amount to abuse of process?
- Does it impair the prospect of future prosecutions should a family wish to pursue this option?
- What power does the HET have to depart from accepted procedures and best practice guidance?
- What is the rationale for treating suspects differently by subjecting some to a more robust process which is compliant with the law and departing from these standards in other cases?
- Are families aware of the risks (if any) in prejudicing future prospects for prosecution.
- Is there full transparency in respect of this process?
- Why are there no written policy documents on procedures for identifying, tracing and interviewing military personnel?

3. Accountability:

To comply with Article 2, investigations must be effective in order to secure accountability. The research raises questions about the HET process, the effectiveness of investigations and ability to hold the military to account. There are individual expressions of regret and/or apologies from individual soldiers in HET reports.³² And, crucially, victims are frequently vindicated. The symbolism of apologies is important for many families; it provides a measure of acknowledgement. However individual expressions of regret or apology should not diminish the obligation to carry out impartial, effective and transparent investigations.

Conclusion:

There are many more issues raised by the research that require discussion but are outside the scope of this paper. The points above are the most salient for the purposes of this briefing. Of particular note are apparent anomalies and inconsistencies in the investigation process where the military is involved, compared to historic cases where non-state or paramilitary suspects are involved. The focus of the paper is the independent team set up by the HET to examine all RMP cases. The team is made up of retired police officers from outside Northern Ireland. This raises questions about the ability, and/or perception, of the HET to undertake impartial, effective investigations in cases involving State agencies and the extent to which the families participating in the process are aware of departures from accepted procedures. Importantly, this raises concerns about the extent to which the HET's processes and procedures are compliant with Article 2. The perception of

independence as well as its reality is critical as it impacts directly on the confidence of those who engage with the HET process. The author recommends that a more in depth investigation, with full access to HET policies, procedures and comparative reports, should be undertaken by the Criminal Justice Inspector for Northern Ireland.

Dr Patricia Lundy
Senior Lecturer
University of Ulster
Jordanstown
p.lundy@ulster.ac.uk

¹ There is some evidence to suggest that RMP investigations may have extended beyond 1973.

² FOI Request number F-2011-03623, received November 21, 2011, on file author. "36 review summary reports have been delivered to families." Each victim's family receives a HET report detailing the nature of the review conducted and a response to unresolved questions raised by the family.

³ The sample of 24 HET reports is made up of 12 individual HET case reports completed between 2010 and 2011; a further 5 individual HET case reports completed in 2006-7; the remaining 7 reports are various drafts of recently completed reports. These reports are part of a much larger sample of HET reports collated by the author from 2006 to the present and cover all categories of deaths unionist civilian/ nationalist civilian/ paramilitary/ security forces. The most recent HET report received by the author was December 2011. Interviews were also conducted with victims' families, NGOs and members of the legal profession.

⁴ It is not necessary to rehearse the obligations fully in this paper. See Lundy, P. (2009) Can the Past be Policed?: Lessons from the Historical Enquiries Team Northern Ireland, Law and Social Challenges, Vol.11, pp.133-138 download at <http://ssrn.com/abstract=1425445>.

⁵ Report of the Bloody Sunday Inquiry, The Rt Hon The Lord Saville of Newdigate (Chairman) The Hon William Hoyt OC, The Hon John Toohey AC, Volume 1X, HC29-IX, TSO, p.12-13, para 173.22-173.23. A full transcript of the proceedings is available at <http://www.bloody-sunday-inquiry.org.uk>.

⁶ The 'RUC policy' is referred to in most of the HET RMP case reports examined.

⁷ Witness INQ2052, see also witness INQ1831, INQ3, a full transcript of the proceedings is available at <http://www.bloody-sunday-inquiry.org.uk>.

⁸ Mrs Kathleen Thompson mother of six was killed 6 November 1971 by a British soldier of the Royal Green Jackets in disputed circumstances. See, Kerr.J, In the High Court of Justice in Northern Ireland, Queen's Bench Division (Judicial Review), In the Matter of an Application by Mary Louise Thompson For Judicial Review, Ref:KERA3639T

⁹ It is also worth noting that in accordance with the law and practice at the time inquests did not require attendance of soldiers involved in fatal shootings. Instead unsworn statements were usually produced as court exhibits. This meant that there was no opportunity for cross-examination. Thus, original inquests were held on the basis of information obtained from a flawed RMP investigation process, as evidenced by the Saville Inquiry and Sir Brian Kerr's judgement (2003) (see endnote 8 above). It is probable that some victims' families' will submit legal applications to the Attorney General (AG) requesting that he exercise his power under section 14 of the Coroners Act (NI) 1959 to order fresh inquests. Inquests must now comply with Article 2 of ECHR and British soldiers involved in fatal shootings are compellable witnesses. The AG has already ordered fresh inquests in the case of Daniel Hegarty and the 'Ballymurphy cases' (the latter involved the deaths of 11 civilians). There are over 150 RMP cases.

¹⁰ The NGOs in attendance included BIRW, CAJ, PFC, and also a legal representative and the author.

¹¹ Credit for highlighting these issues, and the subsequent changes to HET reports that reveal inadequacies in RMP investigations should go to NGOs. Copy of minutes June 2007 NGO/HET meeting, and PFC Position Paper, are on file with the author.

¹² The information was in the public domain from 2000 onwards as a result of evidence given to the Saville Inquiry and Sir Brian Kerr's judgement in the Thompson case was available in 2003.

¹³ See Lundy, P. (2009) Can the Past be Policed?: Lessons from the Historical Enquiries Team Northern Ireland, Law and Social Challenges, Vol.11, pp.133-138 download at <http://ssrn.com/abstract=1425445>.

¹⁴ HET, Position Paper, 'Identification, Tracing and Interviewing of Military Personnel', August 2007, copy on file with the author

¹⁵ The research found that "each stage of the HET process had involvement of significant numbers of long serving retired RUC officers; this included the Command Team, senior managers of intelligence and the entire HET Intelligence Unit. In addition, at the time of the research, a former employee of the Ministry of Defence (MoD) who had been previously stationed in Northern Ireland during the conflict performed the role of Command Secretary, Information Manager and Specified Person of Contact with MoD." The research further noted; "given the very high numbers of retired police officers working in the HET, a crucial matter seemingly overlooked is who has oversight responsibility." See, Lundy, P. (2009) Can the Past be Policed?: Lessons from the Historical Enquiries Team Northern Ireland, Law and Social Challenges, Vol.11, see especially pp.133-148, can be download at <http://ssrn.com/abstract=1425445>.

¹⁶ Joint submission by Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC) in relation to the supervision of cases concerning the actions of the security forces in Northern Ireland, Submission no. S376, February 2012, p.3-9. Copy available at <http://www.caj.org.uk/>

¹⁷ In 2009 the Committee of Ministers decided to close its examination of general remedial measures on the grounds that the HET could bring "*a measure of resolution*" to victims' and had "the structure and capacities to allow it to finalise its work", see Interim Resolution CM/ResDH(2009)44.

¹⁸ Joint submission to the Committee of Ministers from the Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC) in relation to the supervision of cases concerning the actions of the security forces in Northern Ireland, Submission no. S376, February 2012, p.3.

¹⁹ In over 100 HET reports I have studied - covering all categories of deaths (unionist civilian/ nationalist civilian/ paramilitary/ security forces) - none refer to a pragmatic approach.

²⁰ Direct quote from FOI Request number F-2011-03623, received November 21 2001, on file author.

²¹ Case A: Civilian shot dead by British army in 1971. There are three drafts of this report spanning a period of three years (2007-2010); all three reports are on file with author. Case B: civilian shot dead by British army in 1971, there is one draft recently delivered to the family, a copy is on file with the author.

²² Meeting, 8 February 2012, held in CAJ Office, also in attendance were Patricia Lundy and Gemma McKeown (CAJ), minutes of the meeting are on file with the author.

²³ It is believed that these interviews are not recorded; but it is not clear.

²⁴ HET Review Summary Report, on file with author. Details of the case are not revealed for reasons of confidentiality.

²⁵ FOI Request number F-2011-03623, received November 21, 2011, on file author.

²⁶ FOI Request number F-2011-03623, received November 21, 2011, on file author.

²⁷ It is important to note that contemporary witness statements refer to new statements made by individuals who witnessed the death/incident but did not make a statement to the police at the time. It is my understanding that the witnesses, the families, NGOs and/or lawyers who enable new witnesses to come forward, were not informed by the HET that new statements would form part of a 'pre-interview disclosure package' to solicitors representing soldiers. In a meeting with Dave Cox (HET Director), Paul Johnson (SIO) and Neill Kerr, the HET confirmed that new witness statements are included in the 'pre-interview disclosure package', 8 February 2012, held in CAJ Office, also in attendance were Patricia Lundy and Gemma McKeown (CAJ), minutes of the meeting are on file with the author.

²⁸ This is based on interviews with a number of solicitors representing paramilitary suspects in recently examined historic cases; details of these cases are confidential. A more in depth investigation and scrutiny of comparative cases is recommended.

²⁹ FOI Request number F-2011-03623, received November 21, 2011, on file author.

³⁰ FOI Request number F-2011-03623, received November 21, 2011, on file author.

³¹ It is surprising that the HET no longer have written policies on such important procedures. In August 2007 senior HET management drafted a number of 'position papers' on HET policy with regards to 'Identification, Tracing and Interviewing of Military Personnel', copies on file with the author.

³² These apologies raise a number of issues that cannot be adequately addressed in this briefing paper.