

<b>Institution:</b> Queen's University Belfast		
<b>Unit of Assessment:</b> Law (UoA 18)		
<b>Title of case study:</b> Dealing with the Past in Northern Ireland		
<b>Period when the underpinning research was undertaken:</b> June 2006 - June 2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Kieran McEvoy Anna Bryson Louise Mallinder	<b>Role(s) (e.g., job title):</b> Professor Senior Lecturer Professor - previously PDRF	<b>Period(s) employed by submitting HEI:</b> July 1995 – present Jan 2014 – present Sep 2018 – present Aug 2007 – Aug 2009
<b>Period when the claimed impact occurred:</b> 1 Aug 2013 – Dec 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<b>Summary of the Impact</b> The combined <i>significance</i> of the research of McEvoy, Mallinder and Bryson is its profound, sustained and multi-layered impact upon the legal, policy and public understanding of dealing with the legacy of the Northern Ireland (NI) conflict. First, their local and international research on amnesties, truth recovery and the value added of oral history to transitional justice has directly influenced efforts to deal with the past in NI since 2014. Second, working in partnership with the local human rights NGO, the Committee on the Administration of Justice (CAJ), they have produced a substantial body of policy-focused research which has directly impacted political negotiations in NI (2014-2015), UK draft legislation (2018) and the deliberations of parliamentary select committees in the UK (2017/2019/2020) on legacy in NI. Third, from 2017, their research has directly influenced the political and public debate on a statute of limitations for security force veterans who served in NI. The <i>reach</i> of their impact has included the UK and Irish governments, NI political parties, civil society groups (including victims and survivors) and the United Nations.		
<b>2. Underpinning research</b>		
<u>Research Context</u> NI endured an armed conflict (1968-1998) that claimed more than 3,600 lives. In 2017 the Northern Ireland Victims and Survivors Commission reported that 26% of the adult population identified as victims due to harms directly experienced or bereavement. 1,186 murders remain unresolved. In 2014, the British and Irish governments and 5 NI political parties agreed in the Stormont House Agreement (SHA) to establish 4 complementary mechanisms to deal with the past via Westminster legislation. They are a Historical Investigations Unit (HIU); an Oral History Archive (OHA); an Independent Commission on Information Retrieval (ICIR); and an Implementation and Reconciliation Group (IRG). Draft legislation was consulted on in 2018 and the government committed to passing a legacy Bill in 2020 but this was delayed due to the pandemic.		
<u>Research Insights and Impact</u> The team has produced a significant body of underpinning research in transitional justice, the interdisciplinary field that addresses how societies deal with legacies of violence and human rights abuses. Their research has explored key themes including how to effect change in transitional justice through expert mobilisation 'from below', how to encourage effective truth recovery through amnesties, immunity and sentence reduction and the value added of oral history to reconciliation. They have also conducted fieldwork in over a dozen countries on how transitional justice mechanisms work (or not) in practice (including Colombia, South Africa, Argentina, Chile, Uganda and Sierra Leone). This body of research has underpinned the team's direct and material impact on efforts to deal with the legacy of the NI conflict. Indicative examples include: <b>R1</b> argued that dealing with the past should not be left to top-down, state-centric elite actors and that civil society, with appropriate legal expertise, can help to shape and direct transitional justice. It provided the theoretical framework for the team's impact work on legacy in NI. <b>R2</b> identified criteria relating to when it may be permissible to waive prosecutions for human rights violations under international human rights law. This output shaped the team's work on trading immunity for truth recovery and		

the debate on a statute of limitations. McEvoy's contribution to this piece interrogated the intersection between amnesties/immunity, conflict transformation and the rationales for punishment. In **R3**, drawing upon over 200 NI conflict-related interviews, Bryson provided a root and branch review of the contribution of oral history to transitional justice. This shaped the team's approach to the role and function of the proposed Oral History Archive. **R4** includes a 'Model Bill' together with critical analysis of how NI legacy legislation should be guided by international and domestic human rights law and best practice from their experience in the field of transitional justice. McEvoy's contribution was on investigations, immunity and reconciliation and Bryson's focus was oral history. **R5** examined the particular utility of specialist knowledge in shaping relations within a given 'epistemic community' and its effect on influencing policy on legacy in NI. In **R6** Mallinder analysed how some stakeholders in NI have sought to advance narrow and partial interpretations of international human rights law to restrict investigations and prosecutions of past offences. It informed the team's policy responses to proposals for immunity from prosecution.

### 3. References to the Research

**R1** McEvoy, K (2007) 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice', *Journal of Law and Society*, 34:4, 411-40 <https://doi.org/10.1111/j.1467-6478.2007.00399.x>

**R2** McEvoy, K and Mallinder, L (2012) 'Amnesties in Transition: Punishment, Restoration, and the Governance of Mercy', *Journal of Law & Society*, 39:3, 410-40 <https://doi.org/10.1111/j.1467-6478.2012.00591.x>

**R3** Bryson, A (2016) 'Victims, Violence and Voice: Transitional Justice, Oral History and Dealing with the Past', *Hastings International and Comparative Law Review*, 39:2, 299-353 <https://www.dealingwiththepastni.com/project-outputs/academic-research>

**R4** McEvoy, K et al (2016) 'Stormont House Agreement: Model Implementation Bill' & 'Clause by Clause: The Reasoning in the Stormont House Model Bill', *Northern Ireland Legal Quarterly* 67:1-36,37-66 <https://nilq.qub.ac.uk/index.php/nilq/issue/view/10>

**R5** McEvoy, K and Bryson, A (2016) 'Justice, Truth and Oral History: Legislating the Past 'From Below' in Northern Ireland', *Northern Ireland Legal Quarterly*, 67:1, 67-90, 2016 <https://nilq.qub.ac.uk/index.php/nilq/article/view/96/67>

**R6** Mallinder, L (2019) 'Metaconflict and International Human Rights Law in Dealing with Northern Ireland's Past', *Cambridge International Law Journal* 8:1, 5-38 <https://doi.org/10.4337/cilj.2019.01.01>

*Indicators of Quality:* All outputs were published in peer-reviewed journals and are at least 2\* quality. **R1** won the 2009 SLSA Article prize for the best socio-legal article and is heavily cited (454 cites on Google Scholar, 220 Scopus). **R2** was supported by AHRC funding (Beyond Legalism: Amnesties, Transition and Conflict Transformation (McEvoy PI, Mallinder PDRF, AH/E008984/1, £305,000). **R3** was published in one of the top 20 international law reviews in the US (based on citations per 1,000 pp of output) and this research was awarded the 2016 QUB Vice Chancellor's Post-Doctoral Research Prize. **R4** and **R5** were supported by two grants: AHRC (*Amnesties, Prosecutions and the Public Interest*, McEvoy PI and Mallinder CI, AH/J013897/1, £96,000) and *Lawyers in Conflict and Transition* (ESRC, McEvoy PI, Mallinder CI, Bryson PDRF, £490,000). **R6** was the 2019 Lauterpacht Centre for International Law Annual Lecture, University of Cambridge.

### 4. Details of the Impact

Below are indicative examples of how the team's research has directly influenced debates on legacy since August 2013. It also details the reach and significance of that impact.

#### 1. Impact on Draft Legislation to enact the SHA (2013-2014)

During the negotiations which led to the SHA, the team drew on their research on 'transitional justice from below' [**R1**] and on the ways to encourage truth recovery and amnesties [**R2**] to propose models for the negotiating parties on how this could be facilitated in NI. One model they put forward - which suggested limited immunity in return for truth rather than a broader amnesty - was ultimately adopted in the SHA. As the DUP lead legacy negotiator Sir Jeffrey Donaldson said, 'We have met with Kieran McEvoy and his colleagues and listened to what they have to say. We have made it clear both in public and in private that we are opposed to amnesties for terrorist murder. However, limited immunity is a separate concept' [**S1**]. Following the SHA, there have

been intermittent high-level negotiations on advancing legacy (see below). The team continued to draw on their research to develop proposals to overcome successive political and legal obstacles. The sustained value of these interventions was noted by Sinn Féin lead negotiator and former IRA leader Gerry Kelly: *'the Model Bill team have over many years provided an informed contribution to complex legacy discussions...[and] their work has informed considerations of both governments and the political parties, while also developing wider public understanding of legacy issues'* [S2].

## **2. Impact on Draft Legislation to Enact the SHA (2015-2021)**

Soon after the SHA's publication in Dec 2014, working with a parliamentary draftsman, the team developed a 48pp 'Model Bill' from the SHA 5pp 'heads of agreement'. This 'Model Bill' [R4, R5], launched at the House of Lords in 2015, contains 70 detailed clauses with a further 41pp of explanatory notes and a model treaty on the ICIR setting out what that Agreement would look like in human rights compliant legislation. McEvoy, with the NGO partner, CAJ, led on investigations/truth recovery and reconciliation (HIU, IRG); Mallinder and McEvoy on prosecutions/immunity (ICIR); and Bryson on oral history (OHA). The legal and political complexities involved have been discussed at over 20 meetings with the UK government legislation drafting team, their Irish counterparts, and politicians from across the political spectrum. The team also raised civil society awareness and sought feedback on emerging drafts by hosting public events, conferences and seminars (see below). Key provisions of the government's Draft NI Stormont House Agreement Bill 2018 (henceforth 'SHA Bill' [S4]) were directly influenced by the team's 'Model Bill' e.g. (i) the governance arrangements, powers and funding of the HIU (SHA Bill Clauses 2-15, 24, and Schedules 3-8); (ii) the limited immunity provisions in return for information recovery of the ICIR and the importance of credibility testing information (SHA Bill Clauses 42,44,45); (iii) the independence, governance and ethical standards of the OHA (SHA Bill Clauses 51,52,56); (iv) the remit and operation of the ICIR (SHA Bill Clauses 59,62, Schedule 17). As a former under-Secretary of State for NI confirmed in a letter to the UoA partner CAJ *'I would like to acknowledge the input that you and others have brought to the Shadow Bill [Model Bill] project, and I know my officials have found this to be a useful and innovative way of engaging in parallel with the development of the [government] Bill'* [S3]. The team's (159pp) response to the Draft Bill was in turn widely used by civil society groups in their own responses during the legislation consultation (see reach below).

## **3. Providing a Solution to the National Security Impasse (2015)**

In 2015, political negotiations on implementing the SHA broke down over the issue of UK national security. In particular, nationalist victims of state violence threatened to withdraw support for the SHA over a perceived 'British veto' on truth recovery. The Model Bill team worked closely with the two principal nationalist victims' groups, the two main nationalist parties (Sinn Féin and the SDLP) and the Irish government to devise a model that could re-establish confidence [R5]. A version of this model, allowing for a judicial determination as to what constitutes a legitimate national security concern, is contained in Clause 21 the UK government's 2018 Draft Bill. Commenting on this work, then Irish Minister for Foreign Affairs and Trade stated: *'the model which you have presented to Secretary of State Villiers and I is a most valuable and constructive contribution to the deliberations on the establishment of the legacy institutions and the crux issue of onward disclosure'* [S5].

## **4. Finding a Legally Viable Solution to the Statute of Limitations Impasse (2017-21)**

In 2017, following the arrest and prosecution of British soldiers for NI conflict-related offences, British army veterans began to campaign to end what they dubbed a 'witch-hunt' against security personnel. The Model Bill team submitted a detailed written submission on this issue to the House of Commons Defence Select Committee (DSC) [S6a] and McEvoy gave oral evidence, arguing that a blanket statute of limitations for soldiers would be unlawful under international law and would inevitably be applied to former paramilitaries [S6a]. He put forward an alternative method of reducing conflict-related jail time to 'zero' while retaining the prosecutorial, truth recovery and reconciliation components of the SHA. McEvoy's oral evidence and the team's underpinning research are cited 16 times in the DSC report and the Committee drew directly and explicitly from these options in their written report to government. It concludes *'to borrow Professor McEvoy's phrase, the space for legal imagination resides in responding to historic allegations against former service personnel'* [S6a, p20]. In a letter to the UoA, then NI Director of Public Prosecutions (the legal body with statutory responsibility for decisions on conflict-related prosecutions) described McEvoy's arguments to the Committee as *'a tour de force'* adding, *'His contributions were*

*measured, knowledgeable and legally robust while at the same time seeking to find principled but workable solutions to these complex and challenging issues' [S7]. While the Conservative-dominated DSC recommended a statute of limitations for NI, this has not been implemented. Indeed, in subsequent correspondence to DSC Chairperson, the former Secretary of State for NI referred to the evidence presented to the DSC when stating that such an amnesty would be against international law and would inevitably apply to former paramilitaries [S8]. In 2018-19, McEvoy was invited to attend a series of meetings with the Chief of the General Staff of the British Army, the head of Army Legal Services and others, and agreed to further develop 'zero jail time options' which are lawful and compatible with the SHA Agreement. The Model Bill team published a detailed report on this in April 2020. The NI Affairs Committee discussed that report at Westminster. The team is cited 6 times in the Committee's report [S6b]. In questioning the former Victims' Commissioner, Claire Hanna MP referred to 'the document from Kieran McEvoy, Louise Mallinder and others offering to reduce to zero jail time. Do you think that could be workable or acceptable to victims?' The former Commissioner replied, 'that team did have a session with the Victims and Survivors Forum and worked through those options... For most people they felt they could live with that' [S6c]. This report was also the focus of high-level discussions including a private meeting (Nov 2020) chaired by the Archbishop of Canterbury at Lambeth Palace involving McEvoy and Bryson, the NIO Permanent Secretary and Director of Legacy, Irish government equivalents, former Victims' Commissioner, the British Army's Head of Legal Affairs, senior loyalist and republican ex-combatants and senior police officers.*

### **5. Evidence of Reach: Shaping the Public Conversation on NI Legacy Issues (2015-2021)**

The Model Bill team's work has also had a substantial impact on building understanding, awareness and engagement among victims' groups and other civil society actors with what are often legally complex legacy questions. To achieve this, the team has: routinely engaged in private bilateral meetings with key stakeholders; organised 20 public seminars and 6 conferences; made all project reports freely available online; and engaged extensively in media work. The team's influence on civil society engagement on legacy is evidenced by citations of their reports. For example, publicly available responses to the government's consultation on the draft legislation in 2018-19 indicate that 19% (8 of 43) submissions directly cite McEvoy and/or the Model Bill team [S9a]. These include the Green Party, Amnesty International, and the Irish Congress of Trade Unions. The latter is the largest civil society membership organisation in NI representing 215,000 members across 34 trade unions. It stated, 'Our allies in the Committee on the Administration of Justice (CAJ) and QUB Law have already produced their joint submission to this process, which has our support' and: 'We concur with the points made and concerns raised by the legal experts from CAJ/QUB Law' [S9b]. In the most recent NI Affairs Committee inquiry into NI legacy, 12 (33%) of the 36 non-QUB written submissions cite the team's research including the Methodist Church in Ireland, NI Human Rights Commission and the Wave Trauma Centre [S6b, pp31-33]. The former head of research and policy in the Commission for Victims and Survivors stated that the work of the Model Bill team: 'has been crucial in informing the public debate... I know this public service has been particularly valued by victims from across the political spectrum' [S10].

As part of their efforts to inform the public debate on legacy, McEvoy, Mallinder and Bryson were also interviewed, referenced or quoted individually or collectively over 130 times in print, broadcast and online media (2014-20). In print, they appeared in the *Financial Times* (28 Aug 2015 & 2 Jun 2014 - circulation of 155,000 per issue and 1,000,000 online subscribers), *The Times* (2 May 2017 & 27 Apr 2017- circulation of 400,000 and 300,000 online subscribers) and *The Irish Times* (19 Mar 2015, 9 Apr 2020, 6 Dec 2020, - circulation of 79,000 and 10,800,000 monthly online users). They have written over 20 feature articles, Op Eds and blogs e.g. *The Guardian* (11 May 2018 - circulation 125,000 and 85,000,000 global monthly website users), *The Irish Times* (30 March 2018) and the *Belfast Telegraph* (5 April 2017, 19 June 2017 - circulation 31,000 with 3,400,000 monthly users). On radio, they were interviewed on the BBC Radio 4 programme PM (21 Nov 2013 - 4.11,000,000 listeners weekly), LBC Radio's Nick Ferrari show (20 Jun 2018 - 1,300,000 listeners) the BBC *Nolan Show* (14 May 2018 & 22 Nov 2017 - the most listened-to radio show in NI, reaching 21% of the NI population) and BBC Radio Ulster's multi-award winning daily political affairs *Talkback* (4 March 2014, 20 June 2017, 7 March 2019, 5 & 7 Dec 2020). They have appeared on UTV News (8 May 2014), *Sunday Politics NI* 13 May 2018 (BBC's flagship weekly politics show) and seven times on UTV's weekly politics programme, *The View from Stormont*

(e.g. 5 Mar 2019, 3 Oct 2017 & 6 Feb 2017). When details of the Nov 2020 Lambeth Palace meeting were leaked, it made front-page news in two of the three local newspapers and was the lead story on NI TV and radio news. The former PSNI Chief Constable said *'Anyone who takes the time to read this [Model Bill team] report will see that it is trying to make sense of the legacy journey that we've been on and all the various stalled and failed attempts at resolving the legacy issue... it's good that we have the brain power from academia ... trying to nudge this thing forward'* [S11].

### 6. International Impact

Finally, the team has had a significant impact on international scrutiny of the UK's compliance with its human rights obligations regarding NI legacy matters. In 2015, they helped to coordinate a mission to NI by the then UN Special Rapporteur on Transitional Justice, directly impacting his report presented to the UN Human Rights Council in 2016. He confirmed in a letter to QUB Law: *'Profs McEvoy and Mallinder and Dr Anna Bryson have significant international reputations in the field of transitional justice... Their research on trying to find human rights compliant solutions to NI legacy matters including truth recovery and national security considerations, justice, oral history and reconciliation was an invaluable resource for us and directly influenced my thinking in writing the country visit report I presented to the [UN] Human Rights Council... It is clear to me that their work has played a key role in anchoring the NI legacy conversations to the relevant international human rights standards, particularly in recent times in response to pressures in Westminster for a statute of limitations for former soldiers... Prof McEvoy edited a well-known book some years ago called Transitional Justice from Below. This is what it looks like in practice'* [S12].

### Section 5: Sources to Corroborate the Impact

[S1] Belfast Telegraph 9 Dec 2013 'Four Plans Put Forward to Deal with Troubles Crimes.'  
[www.belfasttelegraph.co.uk/news/northern-ireland/four-plans-put-forward-to-deal-with-troubles-crimes-29821260.html](http://www.belfasttelegraph.co.uk/news/northern-ireland/four-plans-put-forward-to-deal-with-troubles-crimes-29821260.html)

[S2] Sinn Féin Press Statement 9 Apr 2020 'Kelly Welcomes Model Bill Report on Legacy.'  
[www.sinnfein.ie/contents/56441](http://www.sinnfein.ie/contents/56441)

[S3] Letter from Under Secretary of State for NI to partner organisation, CAJ, 23 Sep 2015.

[S4] Draft Northern Ireland (Stormont House Agreement Bill) 2018.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/706283/Draft\\_Northern\\_Ireland\\_Stormont\\_House\\_Agreement\\_Bill.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706283/Draft_Northern_Ireland_Stormont_House_Agreement_Bill.pdf)

[S5] Letter from Irish Minister of Foreign Affairs to UoA, 30 May 2016.

[S6] Westminster Committee Deliberations on Legacy of Northern Ireland Conflict:

a) House of Commons Defence Select Committee (2017) *Investigations into Fatalities in Northern Ireland Involving British Military Personnel, 7<sup>th</sup> Report of Session 2016–17*.

<https://publications.parliament.uk/pa/cm201617/cmselect/cmdfence/1064/1064.pdf> (p.20).

b) HC Northern Ireland Affairs Committee (2020) *Addressing the Legacy of NI's Past*.

<https://publications.parliament.uk/pa/cm5801/cmselect/cmniaf/329/329.pdf>

c) NI Affairs Committee 24 June 2020, Addressing Legacy of NI's Past.

[www.parliamentlive.tv/Event/Index/acb049f6-5145-4f1f-8fd5-4adc21339d6a](http://www.parliamentlive.tv/Event/Index/acb049f6-5145-4f1f-8fd5-4adc21339d6a) (10.31-33am, 24 June 2020).

[S7] Letter from former Director of Public Prosecutions NI to UoA, 30 Oct 2017.

[S8] [Letter from SOSNI Karen Bradley to Defence Committee Chair Dr Julian Lewis](#), 4 Jul 2018

[S9] Consultation on Addressing the Legacy of Northern Ireland's Past:

a) Northern Ireland Office, 'Addressing the Legacy of Northern Ireland's Past: Analysis of the Consultation Responses.' July 2019 Annex A, p.35.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/836991/Addressing\\_the\\_Legacy\\_of\\_the\\_Past\\_-\\_Analysis\\_of\\_the\\_consultation\\_responses\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836991/Addressing_the_Legacy_of_the_Past_-_Analysis_of_the_consultation_responses_2.pdf)

b) NIC-ICTU (2018) Submission to NIO Consultation on Addressing the Legacy of NI Past.

[www.ictuni.org/download/pdf/nicictu\\_response\\_to\\_nio\\_legacy\\_consultation\\_sept\\_2018.pdf](http://www.ictuni.org/download/pdf/nicictu_response_to_nio_legacy_consultation_sept_2018.pdf)

[S10] Letter from former Head of Research and Policy, CVSNI, to UoA 13 Apr 2017.

[S11] BBC Radio Ulster Talkback, Lambeth Palace Meeting, 7 Dec 2020 12.03pm.

<https://www.dealingwiththepastni.com/public-engagement/media-coverage>

[S12] Letter from former UN Special Rapporteur to UoA, 18 Feb 2021.