

Annex A

Review of research assessment: response form

Please complete and return as a Word attachment to an e-mail, to responses@ra-review.ac.uk. The deadline for responses is 30 September 2003.

Response by (name of person or organisation):

SOCIETY OF LEGAL SCHOLARS

[The Society of Legal Scholars (SLS), formerly the Society of Public Teachers of Law (SPTL), is the foremost learned society for legal academics and jurists. Its purpose is the advancement of legal education and scholarship in the United Kingdom and Ireland. The Society was founded in 1908 and currently has over 2,000 members. This response was debated and approved, with amendments, at the meeting of the Council of the Society at All Souls College on 17 September 2003]

Corporate response (representing the views of the group or organisation): Yes

Private response (representing the views of one or more individuals): ~~No~~

Contact in case of queries:

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Recommendation 1 (see paragraphs 113-116 of the review)

Any system of research assessment designed to identify the best research must be based upon the judgement of experts who may, if they choose, employ performance indicators to inform their judgement.

Do you agree or disagree with recommendation 1? Place a cross beside the appropriate answer:

Strongly agree	X
Agree	...
Neither agree nor disagree	...
Disagree	...
Strongly disagree	...

Comments on recommendation 1:

The Society of Legal Scholars strongly agrees with this statement. Whilst recognising the value that may lie in some inter-disciplinary work, the Society firmly believes that Law must be regarded as an academic discipline in its own right and that the work submitted must be read by experts in the field. Given the breadth of legal scholarship and the volume of research activity, it would not be appropriate to aggregate Law with another discipline for assessment purposes. It is important for the funding councils to appreciate that only a minority of legal research and scholarship is in the form of applied or empirical social science research. The majority of legal research is analytical and reflective in a different style, being more akin to disciplines in the humanities such as philosophy and history. Whilst sharing some concerns with such branches of study, legal scholarship is essentially an interpretative discipline with a number of unique features. It is the Society's firmly held view that only an autonomous Law panel will have the ability to review the very different types of work across the whole spectrum of legal scholarship, encompassing doctrinal, theoretical, socio-legal and empirical research. **We therefore seek an assurance that Law will continue to be the subject of a separate unit of assessment.**

We also recognise the need for sub-panels and specialist advice, given the range of legal scholarship. The Society's understanding is that previous RAE Law panels have based their assessments almost wholly on reading a representative sample of individual scholars' work. Whilst performance indicators such as bibliometric measures may have some use in some other disciplines, the Society firmly holds the view that they have a very limited value in the discipline of Law. The range of journals and publications in which high quality legal research is disseminated is too diverse to make such metrics reliable. Thus, unlike in many other disciplines, there is not necessarily a direct correlation in Law between the quality of an individual article and the perceived standing of the journal in which it is published. Furthermore, monographs remain an important form of scholarship in the discipline of Law. In addition, much legal scholarship is jurisdiction-specific, and so not designed for an international readership as in the case in some social sciences and other disciplines. Similarly, given the nature of the discipline, it is widely accepted in Law that research income is not necessarily an appropriate measure of research quality. It follows that these sorts of performance indicators are also unhelpful in the context of this subject area.

Recommendation 2 (see paragraphs 117-126 of the review)

- a. There should be a six-year cycle.
- b. There should be a light-touch 'mid-point monitoring'. This would be designed only to highlight significant changes in the volume of activity in each unit.
- c. The next assessment process should take place in 2007-8.

Do you agree or disagree with recommendation 2? Please indicate your views using the grid below:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Point a		X			
Point b			X		
Point c		X			

Comments on recommendation 2:

a The Society on balance supports the proposal for a six year cycle, but as an absolute minimum. We believe that too short a period militates against valuable longer-term projects. Our preference would be for a longer time span between exercises as a way of reducing the burden on research active staff, assessors and institutions. If mid-term monitoring is to take place (see (b) below), then we believe the argument for a cycle of more than six years becomes even more compelling. In that event, a smaller panel of experts could ascertain from scrutiny of a list of publications submitted at the mid-term point whether there appeared to be a drop in quality or quantity which merited closer examination, in which case a fuller review could be instigated.

b The Society is not convinced of the value of a mid-point monitoring process, which needs clarification. For example, does the proposed "light touch" monitoring refer to the unit of assessment or the HEI as a whole? If the latter, and the institution fails to achieve the required standard, does this mean that the relevant individual unit of assessment will not be able to enter the RQA? As discussed above, if there is to be mid-term monitoring then we believe the cycle needs to be longer than six years.

c We believe that this is just about acceptable, as a bare minimum, so long as there is sufficient time allowed from the publication of detailed proposals for the next RAE.

Recommendation 3 (see paragraphs 127-133 of the review)

- a. There should be an institution-level assessment of research competences, undertaken approximately two years before the main assessment.
- b. The competences to be assessed should be institutional research strategy, development of researchers, equal opportunities, and dissemination beyond the peer group.
- c. An institution failing its assessment against any one of the competencies would be allowed to enter the next research assessment but would not receive funding on the basis of its performance in that assessment until it had demonstrated a satisfactory performance.

Do you agree or disagree with recommendation 3? Please indicate your views using the grid below:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Point a				X	
Point b				X	
Point c				X	

Comments on recommendation 3:

- a The Society does not see the value of having an institutional-level assessment in relation to Universities which have a proven track record of research performance across the institution. This recommendation will simply add to the already intolerable burdens faced by academic staff for no or minimal public benefit.
- b The Society believes this proposal is over-concerned with processes that should be left to institutions to monitor internally, with evidence for their performance being found in the RAE return itself.
- c This proposal creates the risk that a particular discipline, through no fault of its own, may be let down by other units of assessment in the HEI in question.

Recommendation 4 (see paragraphs 134-155 of the review)

- a. There should, in principle, be a multi-track assessment enabling the intensiveness of the assessment activity (and potentially the degree of risk) to be proportionate to the likely benefit.
- b. The least research intensive institutions should be considered separately from the remainder of the HE sector.
- c. The form of the assessment of the least research intensive institutions would be a matter for the relevant funding council.
- d. The less competitive work in the remainder of institutions should be assessed by proxy measures against a threshold standard.
- e. The most competitive work should be assessed using an expert review assessment similar to the old Research Assessment Exercise.

Do you agree or disagree with recommendation 4? Please indicate your views using the grid below:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Point a		X			
Point b		X			
Point c			X		
Point d			X		
Point e	X				

Comments on recommendation 4:

a We think it needs to be recognised that “collaborative submissions” may be very difficult to organise. We also have doubts as to whether a multi-track system will really save much effort.

b The Society recognises that the RCA provides a “safety net” for some subject areas. However, the decision on whether to submit for the RCA or RQA will be problematic and may have profound implications for subject areas in some institutions. However, our understanding is that in Law there were very few such submissions – the majority of weak research departments simply did not enter the 2001 RAE.

c It is arguable that the assessment of research quality and funding should be kept separate for all institutions.

d In our view, and as explained in response to Recommendation 1 above, there are no adequate proxy measures for Law, so we are uncertain how this recommendation would work in our discipline.

e The Society very strongly supports this principle.

Recommendation 5 (see paragraphs 156-171 of the review)

- a. The output of the Research Quality Assessment should be a 'quality profile' indicating the quantum of 'one star', 'two star' and 'three star' research in each submission. It will not be the role of the assessment to reduce this profile to summary metrics or grades.
- b. As a matter of principle, star ratings would not be given to named individuals, nor would the profile be published if the submission were sufficiently small that individual performance could be inferred from it.
- c. Panels would be given guidelines on expected proportions of three star, two star and one star ratings. These proportions should normally be the same for each unit of assessment. If a panel awarded grades which were more or less generous than anticipated in the guidelines, these grades would have to be confirmed through moderation.¹

Do you agree or disagree with recommendation 5? Please indicate your views using the grid below:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Point a		X			
Point b	X				
Point c				X	

Comments on recommendation 5:

a The Society on balance supports this proposal. In our view the 2001 RAE Law panel, as with its predecessors, devoted an enormous amount of time and energy to the assessment process, but this was not necessarily reflected in the outcomes, as the crude outputs failed to reflect the depth of this process. Thus the Law panel read and assessed the submitted work but for each individual could make only one of three calls - international, national or sub-national quality. Those numbers were then calibrated to yield a rating for the unit that was located on a very narrow range (all the narrower in 2001, relative to 1996, because of the drastic diminution in width of the 4 rating). The panel thus undertook work that could have generated a much more nuanced pattern of gradings than that was actually released. On the other hand, we are concerned that the already considerable burdens on panel

¹ This consultation question reflects an edited version of recommendation 5. The recommendation in the review report also states that 'the funding councils should provide institutions with details of the relative value, in funding terms, of one star, two star, and three star research, and of research fundable through the Research Capacity Assessment in advance of the assessment. These ratios might vary between disciplines.' In the event that the review recommendations are accepted, each funding council will develop its own policies for reflecting the assessment results in funding, taking proper account of Sir Gareth's recommendation.

members would be further increased, as presumably all “borderline” cases would need to be resolved. Thus we do not see that this recommendation as viable unless there is a considerable increase in the resourcing of panels to enable them to do their expanded job properly.

b The Society regards the issue of confidentiality and non-disclosure as absolutely imperative. We were, however, puzzled by para 32 of the Roberts Report, which seems to imply that researcher-level analysis “should not form part of any panel’s working methods”. Our understanding was that this was effectively the sole working method of the Law panel, and that this was an approach which commanded wide if not universal support across the academic legal community. Thus the RAE 2001 Law gradings were awarded on the basis of the aggregated distribution of assessments of individual research outputs.

c On one view it is important to have clear guidance on the expected proportions of ratings in each category so that institutions can make informed decisions about where best to deploy their increasingly limited resources. However, the Society is unhappy with the concept that “star ratings” can be based on a proportional quota which is standardised across disciplines. This undermines the credibility of the claim that the judgements of international and national excellence are made against objective standards. There is, moreover, no evidence to support the assumption that the UK performance of all disciplines in the global academic “market” is equal. Furthermore, the need for credibility *within* the discipline must trump the desire for some spurious equivalence of ratings *between* disciplines. A prime purpose of the RAE is to ensure appropriate distribution of funding within the discipline, given that other aspects of the funding regime already make assumptions about the cost of research in different subject areas.

Recommendation 6 (see paragraphs 172-197 of the review)

- a. There should be between 20 and 25 units of assessment panels supported by around 60 sub-panels. Panels and sub-panels should be supported by colleges of assessors with experience of working in designated multidisciplinary 'thematic' areas.
- b. Each panel should have a chair and a moderator. The role of the moderator would be to ensure consistency of practice across the sub-panels within the unit of assessment.
- c. Each panel should include a number of non-UK based researchers with experience of the UK research system.
- d. The moderators of adjacent panels should meet in five or six 'super-panels' whose role would be to ensure consistency of practice between panels. These 'super-panels' should be chaired by senior moderators who would be individuals with extensive experience in research.

Do you agree or disagree with recommendation 6? Please indicate your views using the grid below:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Point a		X			
Point b		X			
Point c					X
Point d		X			

Comments on recommendation 6:

a The Society's support for this proposal is contingent on the point already made (see Recommendation 1) that Law should continue to be recognised as an autonomous discipline in its own right and therefore retain its status as one of the 20 to 25 UoA panels. We recognise the value of sub-panels to ensure fair treatment of the wide and diverse range of legal research.

b This seems appropriate, so long as panels retain sufficient flexibility to accommodate the particular needs of their discipline. Again, we assume that Law will remain a single unit of assessment.

c This proposal may have some merit as regards some other disciplines. But the Society has serious reservations on this point as regards Law, which relate to the jurisdiction-specific nature of much legal research. As explained in relation to Recommendation 1, research in Law is not readily viewed in international terms as happens in some other subject areas. Indeed, some of the very best legal scholarship is concerned with issues which are specific to the various jurisdictions within the UK. We are not convinced that the use of international

experts in 2001 added anything to the 2001 RAE process so far as Law was concerned. We are also firmly of the view that it is wholly unrealistic to expect a non-UK based legal researcher to take on the role of a full panel member, with the sort of workload expected of Law PAE panel members. In our view any non-UK legal academic who might be willing to so act would be very unlikely to be of the requisite calibre for the task involved.

Recommendation 7 (see paragraphs 198-204 of the review)

- a. The rule that each researcher may only submit up to four items of research output should be abolished. Research Quality Assessment panels should have the freedom to define their own limits on the number and/or size of research outputs associated with each researcher or group.
- b. Research Quality Assessment panels should ensure that their criteria statements enable them to guarantee that practice-based and applicable research are assessed according to criteria which reflect the characteristics of excellence in those types of research in those disciplines.

Do you agree or disagree with recommendation 7? Please indicate your views using the grid below:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Point a	X				
Point b	X				

Comments on recommendation 7:

a The Society fully supports this proposal, which reflects the importance of each UoA developing a procedure which is appropriate to judge research quality within its own discipline. It is, however, crucial that decisions on such issues are disseminated within the academic community before the RAE research cycle gets under way, as a substantial lead in time is required for many types of projects. This is because the number of outputs required inevitably impinges on scholars' research plans. The Society takes the view that four submitted outputs is the *maximum* that it is appropriate to require within a six-year research cycle, given the emphasis on quality in the RAE.

b The Society again fully supports this proposal. It is important that practice-based and applied research receive recognition, as there is a danger inherent in previous RAE rounds that theoretical work may receive undue weight. For example, top quality research may be applied by legal practitioners, as well as government departments and other agencies, including international organisations. This reinforces the argument for Law to retain its status as an independent UoA and also undermines the notion that there can be equal quotas for star ratings as between disciplines. It is also vitally important that these criteria statements are both transparent and properly disseminated at the start of the research cycle.

Recommendation 8 (see paragraphs 205-213 of the review)

- a. The funding councils should work alongside the subject communities and the research councils to develop discipline-specific performance indicators.
- b. Performance against these indicators should be calculated a year prior to the exercise, and institutions advised of their performance relative to other institutions.
- c. The weight placed upon these indicators as well as their nature should be allowed to vary between panels.

Do you agree or disagree with recommendation 8? Please indicate your views using the grid below:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Point a			X		
Point b			X		
Point c	X				

Comments on recommendation 8:

The Society reiterates its very firm view that bibliometric exercises, whatever their value in some other disciplines, carry no weight within the realm of legal scholarship. We also take the view that the nature of legal scholarship is such that other measures, such as the numbers of postgraduate research students or levels of research grant income, should not be elevated to a determinative status. We refer to our comments in relation to Recommendation 1 and repeat that such matters are not necessarily reliable proxies for research quality. Our understanding is that such indicators were not relied upon by the 2001 Law RAE panel, which instead focussed on the quality of the outputs in the RA2 as the cornerstone of all its decisions. This approach had the full support of the academic legal community. Any indicators must be discipline specific and carry the confidence of the relevant academic research community.

Recommendation 9 (see paragraphs 214-234 of the review)

- a. Where an institution submits to Research Quality Assessment in a sub-unit of assessment all staff in that sub-unit should become ineligible for the Research Capacity Assessment, even if they are not included in the Research Quality Assessment submission.
- b. The funding councils should establish and promote a facility for work to be submitted as the output of a group rather than an individual where appropriate.
- c. The funding councils should consider what measures could be taken to make joint submission more straightforward for institutions.
- d. Where an institution submits a sub-unit of assessment for Research Quality Assessment, no fewer than 80% of the qualified staff contracted to undertake research within the sub-unit of assessment must be included in the submission.
- e. All staff eligible to apply for grants from the research councils should be eligible for submission to Research Quality Assessment.

Do you agree or disagree with recommendation 9? Please indicate your views using the grid below:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Point a			X		
Point b		X			
Point c		X			
Point d		X			
Point e		X			

Comments on recommendation 9:

- a No comment.
- b The Society's approval is premised on the caveat "where appropriate". We have doubts as to whether this will be attractive either to many law schools or to individual academics.
- c No comment.
- d The Society can see that if a twin track RQA and RCA is to operate, then some sort of threshold such as this makes sense. But we are concerned that this proposal may be part of a move towards concentrating research into a smaller number of institutions. A further concern is that the ground rules are clear. How is the 80% figure to be identified, i.e. 80% of what? It is less than clear to us how this would operate, especially where there is a possibility that some individuals might get returned to a different unit of assessment (as, for example, may be the case with some criminologists working in law schools). There is a particular problem for those institutions which run the Legal Practice Course (LPC), the

postgraduate vocational course for solicitors. The basis on which staff are employed to teach on the LPC varies. In some law schools LPC staff are separate from HEFCE funded staff and on contracts which do not require research output. In other law schools LPC staff also teach on UG programmes, and may or may not be contracted to undertake research. The Society is anxious that there is parity of treatment for both institutions and individuals so affected.

e The Society's members include lecturers on external funds, research fellows and research assistants. We would expect that their work could be capable of submission. Some RAs in Law produce independent publications of value and we would regard their automatic exclusion from the process as unhelpful.

Recommendation 10 (see paragraphs 235-238 of the review)

Each panel should consider a research strategy statement outlining the institution's plans for research at unit level.

Do you agree or disagree with recommendation 10? Place a cross beside the appropriate answer:

Strongly agree	...
Agree	...
Neither agree nor disagree	...
Disagree	...
Strongly disagree	X

Comments on recommendation 10:

The Society does not regard this as particularly helpful. Indeed, we regard it as positively unhelpful and a further and unnecessary burden on staff. The key issue is the quality of the research output and in Law the "lone scholar" model remains paramount. We are concerned that this proposal will result in a wholly bureaucratic exercise which may distort the RAE.

Question 11 Burden for institutions

The review proposals have been designed to make the burden of assessment proportionate with the possibility of financial reward. Do you agree that this has been achieved? Place a cross by the appropriate answer:

Strongly agree	...
Agree	...
Neither agree nor disagree	X
Disagree	...
Strongly disagree	...

Comments on question 11 – burden for institutions:

The Society has indicated that it retains reservations about some aspects of the proposals.

Question 12 Value of research assessment

What value do you place on the research assessment if the financial reward is likely to be small? Place a cross by the appropriate answer:

High	...
Medium	X
Low	...

Comments on question 12 – value of research assessment:

The Society recognises that the RAE may have importance in terms of a law school's reputation, leaving aside the financial rewards involved.

Question 13 Equality of opportunity for all groups of staff

The funding councils wish to promote equality of opportunity for all staff regardless of age, sexual orientation, political belief, disability, gender, race or religion and seek to ensure that its research assessment policies are compatible with this objective. How successful do you consider that the proposals of the research assessment review are in this respect? Place a cross by the appropriate answer:

Very successful	...
Successful	...
Neither successful nor unsuccessful	X
Unsuccessful	...
Very unsuccessful	...

Comments on question 13 – equality of opportunity for all groups of staff:

The Society believes that a longer assessment cycle may have a marginally beneficial effect in EO terms.

Question 14 Overall approach of the review

Notwithstanding your views on any specific recommendations, and given the responses to the earlier 'Invitation to contribute', do you agree or disagree with the broad approach taken by the review to the question of research assessment? Place a cross by the appropriate answer:

Strongly agree	...
Agree	...
Neither agree nor disagree	X
Disagree	...
Strongly disagree	...

Comments on question 14 – overall approach of the review:

The Society adopts a stance of neutrality on the broad approach of the review. Our overriding concern is that one outcome of the proposals may be to concentrate core research funding on a handful of elite institutions, thus seriously jeopardising research activity in a wide range of law schools. The discipline of Law does not require a "critical mass" in terms of large laboratories and significant numbers of researchers along the model of many sciences. Instead, legal researchers and students require access to library resources (increasingly available over the Internet). Students will learn their research skills from active researchers, whatever the size of the academic department.

Question 15 Further comments

Question 15 – any further comments:

The Society, along with other subject associations, submitted names for consideration for panel membership for the 2001 RAE. The process of consideration and the resulting panel composition meant that the Law panel clearly enjoyed the confidence of the academic legal community. We therefore had confidence in the way in which that process was undertaken and regard it as transparent as it could be in the circumstances.