

<b>Institution: Birmingham City University</b>
<b>Unit of Assessment: 20</b>
<p><b>a. Overview</b></p> <p>Legal research at Birmingham City University is located within the School of Law in the Faculty of Education, Law and Social Sciences (ELSS). The School of Law has not previously entered a research excellence assessment exercise, and is planning to enter up to eight members of staff (two of whom are early career researchers) in the REF2014 bid, which represents approximately 30% of the staff of the School of Law. The rapid growth in research activity and output has resulted from the appointment of an Associate Dean of Research and Business Development at Faculty level and strategic appointments within the School of Law itself, notably a Deputy Head of School with specific responsibility for research and enterprise development and the creation of the post of Director of Research for the School of Law.</p> <p>The diverse nature of the research activity in the School of Law is reflected in its organisational structure. The largest generic research activity relates to the law of the United States of America with five members of staff comprising the Centre for American Legal Studies (CALS). Other active research areas include property law, human rights law, the law of the EU, environmental law and legal education which collectively constitute the Unit for Contemporary Legal Studies.</p>
<p><b>b. Research strategy</b></p> <p><b>b.1. Outcomes of the research strategy since 2009</b></p> <p>The principal vehicle for research development was the setting up of two research clusters as a means of focusing research integration, administration and development. Like other parts of the Faculty of ELSS, research clusters in the school of law emerged after 2009 as part of the University's £3 million strategy to expand its network of Centres of Excellence (CoE) following success in RAE 2008. CoEs were central to the new overarching aims of achieving more effective research governance, building infrastructure and focussing resources in strategically important areas with proven track records of success and potential for growth. This bought just over £1 million of new investment in social science research into a newly constituted Faculty of Education, Law and Social Science (ELSS).</p> <p>CALS was set up, under the leadership of Dr. Jon Yorke, in July 2010, and was officially launched at the Birmingham offices of Squire Sanders LLP (formerly Squire, Sanders and Hammonds Solicitors) in March of 2012. The Centre's primary purpose is to integrate the research interests of a number of staff in different areas of US law (including constitutional law, discrimination and equal protection law, miscarriages of justice through poor forensic science provision, US environmental law and US federalism), to encourage other members of staff to develop related interests, and to project the reputation of the School for excellence in US legal research both internally and externally. It also acts as a locus for the School's long-running American Legal Practice programme which since 1997 has been placing undergraduate students in US law offices in order to gain experience of the operation of the US legal system and the realities of legal practice in general. This has considerably enhanced the extent to which research has informed teaching. CALS also launched its own refereed journal in 2012 called <i>The British Journal of American Legal Studies</i>, under the editorship of Dr. Anne Richardson Oakes. The editorial board includes a number of noted US and UK scholars of American law as well as the Honorable Judge Joseph Greenaway of the US Court of Appeals for the Third Circuit. The journal's website is accessible at <a href="http://www.bcu.ac.uk/elss/school-of-law/research/centre-for-american-studies/british-journal-american-legal-studies/current-issue">http://www.bcu.ac.uk/elss/school-of-law/research/centre-for-american-studies/british-journal-american-legal-studies/current-issue</a>.</p> <p>The other research cluster is the Unit for Contemporary Legal Studies (UCLS). UCLS brought together a number of research-active staff with a diverse range of interests including environmental law, property law, international commercial arbitration, employment law, the law of the EU (particularly the international relations of the EU), human rights law (especially through the Council of Europe), and jurisprudence. This cluster is characterised by a preponderance of researchers in the early stages of their careers and the operation of a research mentor system has been particularly useful in this cluster in encouraging new researchers to publish and in guiding the development and improvement of their outputs.</p> <p>Visiting professors and practitioners have been strategically chosen for specific purposes and have</p>

actively contributed to seminars, or provided advice on research, professional liaison or the provision of placements. They also act as an invaluable means of access to the profession, both in the UK and the US, which allows us to align our research interests to professional as well as academic preoccupations.

### **b.2. Strategy for Future Development.**

The strategy for research in the School is based on the formulation of measurable, attainable, realistic goals over specific time frames (sometimes called the SMART model).

These are:

Goal 1: To increase the percentage of staff producing REF-rateable outputs from the current level of 30% to 50% by 2020.

Specific measures to be employed are:

- The continued use of the Faculty Workload Allocation Model (WAM) which allocates specific research time according to the seniority and productivity of members of staff (see section c for more detailed description).
- The provision of research sabbaticals (see section c for more detailed description). We aim to secure at least six more such sabbaticals in the next REF period to 2020.
- Targeted recruitment of research-active staff.
- The generation of a submission to the REF2020 round (or its equivalent) of 15 members of staff with an average rating in excess of 2.85.

Goal 2: To make the current research clusters more inclusive and integrated.

Though the creation of CALS and UCLS has unquestionably resulted in a huge increase in research activity and output in the past four years, there is room for improvement in the current structure and, in particular, the integration between the various research streams could be greatly improved. To this end we intend, by the end of 2014, to reorganise the administration of research by creating an overarching centre of excellence which better reflects the diversity of our activity and, most importantly, will encourage greater integration between American and domestic/European legal research through comparative research studies. Not only will this perpetuate a distinctive element in our research activity but it will also enable the centre to function as an advice hub for legal practitioners who have client bases in the United States as well as Europe, or other organisations interested in comparative legal matters. The title of the new centre has yet to be finalised but it will reflect this distinctive comparative focus. Within the new centre CALS will maintain a distinct and functional identity as the focus for the BJALS journal and the American Legal Practice programme but will cease to be a centre in its own right.

Goal 3: To attract external research funds.

Hitherto, the School has attracted only modest funding from external sources (see section d), largely because of the School's absence from previous research assessment exercises and the low priority previously accorded to this activity. We aim greatly to increase external funding by targeting funding sources that correspond with our best-rated research. In particular, we will see funding from:

- European and NGO sources that fund socio-legal research and especially social justice (including environmental justice, discrimination and equality) and the development of human rights.
- Higher education research funding bodies, like the HEA.
- Foundations that encourage and fund comparative legal research.
- Government and third sector organisations that commission scoping and state-of-the-game reports which are commensurate with our areas of research excellence.

Our specific target would be to attract £100K in 2014 and to increase this level progressively, and by at least 10% in each subsequent year to 2020, though the precise figures may be subject to adjustment to comport with wider Faculty policy. We will be well-served in this activity by a fit-for-purpose administrative infrastructure and a newly appointed and dedicated professional service team of six to provide support for all aspects of centre research activity.

Goal 4: To increase the number of PGR researchers in the School

We aim to be in a position to support 12 PGR researchers in the School of Law by 2020 (an increase of

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threefold on current numbers). This will be achieved through:

- enhanced funding, especially through the use of graduate teaching assistant PhD students
- a year on year increase in the supervisory capacity of the School of Law, through training, supervision of existing PGRs and recruitment of staff who already have such experience.

Goal 5: To increase the profile of research in the School of Law both nationally and internationally.

This will be achieved by the following means:

- Funding of appearances by research staff (including PGRs) at national and international conferences, seminars and symposia.
- The development, in line with wider Faculty and University initiatives of a high quality digital forum for the dissemination of our research, including web sites and strategic use of social media such as LinkedIn, Twitter, Facebook and blogs. Dr. Jon Yorke's recent successes in this area will serve as a model for future developments.
- The maintenance and enhancement of external links with (i) other educational establishments in the UK and abroad, (ii) non-governmental organisations and, (iii) the legal profession (see section e).

### c. People, including:

#### c.1. Staffing strategy and staff development

Birmingham City University is a practice-orientated university and consequently the University generally, and particularly the School of Law, recruits staff directly from professional practice as well as from academia in order to comply with the requirements of the professional bodies. Those appointed as practitioners generally do not have doctorates or significant research experience. This is the main reason why less than half of School of Law staff are research active. In an effort to encourage research activity in all staff whatever their background the Faculty operates a workload allocation model within which there are different provisions for research allocation for staff at different stages of their career and a package of support for each. Designation to a category and the negotiation of the associated research time is undertaken through the annual independent performance review appraisal process.

Category 1 researchers who are new to research, have just completed a PhD or are undertaking a higher degree or research degree programme, which in all cases will be fully funded by the Faculty regardless of whether a BCU or an external programme is undertaken. Currently three members of the School of Law are being funded and two more fall into this category. Category 1 researchers are allocated 22 days per year to support their study. In addition to mentoring through specialist clusters, access to seminars and the research café series, ELSS works in collaboration with the Faculty of Health to run a 'Getting started in research' programme for this group which includes an annual conference and research clinics with senior research staff from both faculties.

Category 2 researchers make a significant contribution to the income generation and publically available outputs of the Faculty. They produce work that is high quality, impactful or influential. Researchers in this category are allocated 54 days per year (approximately 30% of workload) to support their research activity. Currently two colleagues in the School of Law fall into this category.

Category 3 Senior researchers make a substantial contribution to the income generation and publically available outputs of the Faculty and produce work of consistently high quality. Colleagues in this category are likely to be involved in the leadership and direction of the research work of identified groups of academic staff and are allocated 652 hours, 50% of workload, for research activities. Currently four members of School of Law staff fall into this category.

In each category the research allocation represents a baseline entitlement, ring-fenced through a newly introduced workload allocation model and booked formally through the same process as annual leave. Positioning within categories is reviewed annually through appraisal and the Faculty is beginning to track and set targets for mobility across categories. Additional time is allocated for externally-funded research or knowledge-exchange activity or for successful applications to the Faculty sabbatical or pilot project fund. This ensures that research time is not subordinated to other requirements in the School and prevents research from descending in the order of priorities. It is the responsibility of the Director of Research in the School of Law, in liaison with the Head and Deputy Head of School, to ensure that staff undertake this process.

Staff in any of the categories are also entitled to apply for research sabbaticals -- ranging from one month to a full semester -- which are funded by the Faculty on the basis of open competition between the various research centres. The School of Law has received six such sabbaticals in the last four years which have resulted in the generation of six REF outputs to date.

Colleagues attend and present at conferences and seminars both internally in the staff/student seminar series and externally.. In addition the Research Café provides a forum for staff and students from the wider social science research community to share work in progress or lead discussion around research dilemmas and methodological issues.

Staff in all research categories are able to access funding to support attendance at external seminars and conferences both in the UK and internationally via either CALS or UCLS or the staff development budget. The former provides privileged support for staff giving papers and presentations while the latter is used for colleagues primarily but not exclusively in Category 1, who are orientating themselves within a new research community. In both cases a formalised process with set, published and publicised criteria ensures funds are allocated fairly and transparently and processes are monitored on an annual basis by Faculty Research Committee (FRC) and the Staff

### **c.2. Research students**

The School encourages applications from MPhil/PhD candidates in its specialist areas. At present the School of Law has four PhD/MPhil students, two full-time and two part-time. One of the full-time PGRs is also a graduate teaching assistant and thus has the opportunity to contribute directly the better integration of teaching and research.

Research students in the School of Law are provided with accommodation in a shared area with all the other PGRs in the Faculty as part of the Graduate School. This fosters collegiate atmosphere and encourages cross-fertilisation of ideas, collective support and interdisciplinary thinking.

#### **c.2.1. Recruitment**

ELSS and its constituent research centres of excellence recognise that PGR students represent the lifeblood of the research community. As such the Faculty has invested heavily in the development of a FGS. Formed in 2010 the FGS provides a highly visible focal point for postgraduate research in the social sciences. A full-time Graduate School Administrator (GSA) works alongside academic staff to support the day to day running of the FGS. Governance of the FGS is driven by its members who work closely with GSA and the Associate Dean for Research. This dynamic relationship was recognised by the University in 2011/12 with the award of a Student Academic Partnership grant that enabled student reps to be funded to develop a 3-year action plan for the FGS. The FGS links to the wider graduate community via the University's PGRNet.

Students are recruited strategically to MPhil, PhD, or EdD programmes affiliated to the specialist clusters. This ensures that students are closely supervised and well supported by senior members of the research team and join small, but coherent groups of active researchers. In September 2013 the Faculty piloted the University's new Graduate Teaching Assistant (GTA) scheme. The scheme combines PhD study with a teaching role offering a new hybrid route into fully funded, full-time PGR study that we hope will be attractive to students coming from a practice focused background whilst supporting our mission to embed our research and our researchers within the everyday practices of teaching and learning. The School of Law hosts one of these pilot studentships.

#### **c.2.2. Skills development and monitoring**

Skills development and monitoring of progress is managed carefully and systematically through the Faculty Research Degrees Committee which meets monthly. The faculty has adopted the Vitae researcher development framework to support the maturation of its research community and this is embedded in the annual review of progress (APR) which takes place annually in June. This is a review process involving in-depth self-assessment by the student, the supervisory team and an independent third party. The process has considerably enhanced the efficiency of supervision and completion since 2008.

### **d. Income, infrastructure and facilities**

CALS has been recognised as one of the University Centres of Excellence, which will

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potentially give it access to funds in the future (subject to the realignment described in section b above). Although CALS did not submit to RAE 2008, and is not therefore in receipt of QR funding, the University and Faculty have invested substantially in centre resourcing, allowing staff to receive significant research allocations. To this end CALS has received funding amounting to £28,000 since 2009 to facilitate the launch of the Centre, the attendance of staff at key conferences and access to a research archive held in Boston, Massachusetts.

UCLS has also received University funding. For the academic year 2012-2013 it was awarded £10,000, principally to facilitate attendance at conferences and seminars.

The funding for both the Centre and the Unit is in addition to monies available in the general staff development fund that is accessible by all members of staff (see section c), this is intended for general staff development purposes but also includes research activities. There is also a Faculty fund available for all research active readers and professors, which is intended to be utilised for a variety of research-related activities.

Staff without higher degrees (usually recruited from the profession) are also supported by the School to undertake research leading to an MPhil and/or PhD. The School provides both funding and concessions in teaching (via the WAM) for such staff.

All staff are expected and encouraged to seek external research income. This has been a significant development within the last 24 months, and exemplifies the School's commitment to developing external collaboration to expand its research base. 'Seed corn' funds are available to staff for the generation, preparatory work and development of plans and to provide appropriate support to put them into effect. Moreover, dedicated support staff have been appointed at Faculty level to support staff seeking research funding. Professor Thomas received a grant of £1,000 from the Jersey Community Relations Trust (2009) to facilitate her investigation into human rights violations in the law of succession in Jersey. Sarah King received a grant of £1,000 from the HEA to sponsor an event entitled 'Embedding ePortfolios into Legal Education', where the School of Law showcased their work with Mahara and evaluated the student response to using ePortfolios as a means of assessment. In 2012/13 Emma Flint has been awarded £13,000 of funding from the University's Centre of Excellence in Learning and Teaching (CELT) department to conduct research into a number of areas, including the use of social media in legal education and employability issues relevant to law students.

**e. Collaboration and contribution to the discipline or research base****e.1. Contributions to national and international organisations**

**Dr. Jon Yorke** is a member of the international collaborative organisation Academics Against the Death Penalty based at the University of La Mancha in Spain. He is also a member of the Foreign and Commonwealth Office's Advisory Panel on the Death Penalty and has acted as a consultant to the Presidency of the European Union and the High Representative for Foreign Affairs of the European Union.

**Dr. Haydn Davies** is co-convenor of the Wales Working Party of the United Kingdom Environmental Law Association and jointly undertakes responsibility for legislative scrutiny and consultation responses in respect of those aspects of environmental law devolved to Wales. In February 2013 he was also elected to the National Council of UKELA.

**Sarah Cooper, Professor Julian Killingley and Dr. Jon Yorke** act as tutors for the charitable organisation *Amicus* where they use their research expertise in training advocates in death penalty litigation in the US and other jurisdictions. The School of Law has also contributed to *amicus curiae* briefs filed with US state and federal courts. This professional service has recently been extended to the British Consulate in Atlanta, Georgia in the case of Warren Hill. Following discussion with the Foreign and Commonwealth Office (FCA), the School will be utilising its expertise to contribute both to the defence of Mr. Hill, and to act as an advisory resource to the FCO and the British Consulate in Atlanta. The FCO reference states that the School has, "provided advice to our Diplomatic Posts in Atlanta," and that the School will be filing an "*amicus curiae* brief to provide the international law arguments in Hill's case."

**e.2. Participation in leading conferences**

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**Dr. Jon Yorke** has presented papers at a number of international, regional and national conferences. These include, *The Death Penalty as an Inhuman Punishment in the Council of Europe*, The Fifth World Congress Against the Death Penalty, Palace of Congress, Madrid, Spain, 11-16 June 2013; *Panel Discussion: Critics meet the author - David Garland on his book Peculiar Institution: America's Death Penalty in an Age of Abolition*, British Society of Criminology Conference, Institute of Criminal Justice Studies, University of Portsmouth, 4-6 July, 2012; *The Challenges for the Right to Life in the 21<sup>st</sup> Century*, in Congreso Internacional de Jovenes Investigadores en Ciencias Penales, Universidad of Salamanca, Spain, 27-29 June 2011; *Overview of the 2010 UN Report on the Death Penalty*, Commission on Crime Prevention and Criminal Justice, Twentieth session, United Nations, Vienna, Austria, 11 - 15 April, 2011; *The EU and Abolition of the Death Penalty*, Working Group I – EU Instruments in the Fight Against the Death Penalty, 12<sup>th</sup> EU-NGO Forum on Human Rights, European Commission, Brussels, 12-13 July 2010; *Sovereignty and the Unnecessary Penalty of Death: European and United States Perspectives*, Conference: Is the Death penalty Dying? European and American Perspectives, at Amherst College, Boston, 12-13 April 2010; *The Evolving Human Rights Discourse of the Council of Europe, Renouncing the Sovereign Right of the Death Penalty*, paper presented and translated into Spanish at the International Symposium on the Universal Abolition of the Death Penalty, Centre for Political and Constitutional Studies, University of Castilla-La Mancha, Madrid, 9-11 December, 2009.

**Dr. Anne Richardson-Oakes** has participated in and presented papers at a number of conferences, including BASA Conference Nottingham 2009, 5th International Conference on Interdisciplinary Social Sciences, Cambridge August 2010, ANZL Law & History Conference, Melbourne Dec 2010, AALS Workshop New York June 2010 – "*Post Racial*" *Civil Rights Law, Politics and Legal Education: New and Old Color Lines in the Age of Obama*, Law, Language & Literature Colloquium, Center for Research on Common Law (University of Paris-Ouest, Nanterre, Paris) June 2011.

**Sarah Cooper** has presented papers at national and international levels, including, *Marriage, Family Discrimination and Contradiction: The Legacy and Future of the ECtHR's jurisprudence on LGBT Rights*, Socio-Legal Studies Conference, 2011; *Using Developments in Law and Science to Re-examine Evidential Issues in Post-Conviction Claims of Innocence in the US*, Socio-Legal Studies Conference, Sussex; *The Collision of Law and Science: How do American Courts Respond to Developments in Forensic Science?*, The Academy of Criminal Justice Sciences, New York, 2012 and *America Innocence Commissions – Political Hot Potatoes with Cool Ideas*, US Academy of Criminal Justice Sciences, New York, 2013.

### e.3. Journal Editorships

Several members of staff act as editors of journals. **Dr. Anne Richardson-Oakes** is editor in chief *BJALS* and **Sarah Cooper**, **Professor Julian Killingley**, **Dr. Haydn Davies** and **Dr. Jon Yorke** are members of the editorial board. **Yorke and Killingley** are also members of the editorial board of the *Amicus* journal. **Professor Meryl Thomas** has acted as a referee for a number of journals including *The Conveyancer* and the *International Journal of Law, Language and Discourse*. **Davies** is a member of the editorial board of *e-law*, the Journal of the United Kingdom Environmental Law Association.

### e.4. Visiting posts

**Dr. Haydn Davies** is a visiting tutor in Environmental Law and Management at the University of Aberystwyth.

**Professor Meryl Thomas** is currently a Visiting Professor in Property Law at the Université Paris Ouest Nanterre La Defense, Visiting Professor in the Law of Succession at the Institute of Law in Jersey and the Visiting Scholar in Trusts Law at the Institute of Financial Services Practitioners Malta.

**Sarah Cooper** is Visiting Fellow at the Arizona Justice Project at the Arizona State University

### e.5. Citation of research in litigation and policy

**Dr. Anne Richardson-Oakes' and Dr. Haydn Davies'** paper from 51 Santa Clara Law Review 573 was cited in an appellate brief in the case of *State of Wisconsin v Sellhausen* 2011 WL 2250997 (2011) the Supreme Court of Wisconsin. It has also been cited in 2 Witkin Cal. Proc. 5<sup>th</sup> Courts s57, Conduct of Judicial Proceedings (Canon 3)(a practitioners' reference text in California which normally only considers case law sufficiently authoritative for inclusion), and in an article in 43 Colum. Hum Rts. L. Rev. 349, 413 (2012)

**Dr. Jon Yorke's** Blog, "Human Rights and Public Law," contributes to the current debates on human

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rights. For example, the Post, "Reflecting on the Crisis in Egypt," was read around the world, including the UN Office in Pakistan, and the blog posts on the Mock United Nations Sessions were picked up on Twitter by the United Nations, and the Foreign and Commonwealth Office.

**Professor Meryl Thomas'** work on the trust in the context of pension schemes, has been cited in all the major Equity and Trusts textbooks (for example, Martin, 19th ed, p 508; Pettit, 10th ed, pps 93, 175, 397, Snell's Equity 27-2), and by others working in the field (for example, Tang Hang Wu, 21 Trusts Law International p.64).

**e.6. Committee members for professional bodies**

**Professor Meryl Thomas** was a member of the academic board of the Willwriters and Probate Practitioners Association (2009-2012).

**e.7. Government Liaison**

**Dr. Jon Yorke** was commissioned by the Foreign and Commonwealth Office's Death Penalty Expert Group to compile a report entitled "Islam and the Death penalty," for the attention of Baroness Warsi, Senior Minister of State.

**Dr. Jon Yorke's** reputation in international law and the procedures of the United Nations resulted in a mock United Nations General Assembly session in the Foreign Office in London involving undergraduate students, and several BCU and FCO staff. The success of this event has resulted in an invitation from the FCO Communications Excellence and Regulation Team to help organise and participate in their "Youth Inspiration Group", an initiative that will contribute directly to the work and policies of the FCO.

**e.8. Collaboration with Prominent Academics, Practitioners and Institutions in the UK and Overseas**

In addition to the organisation already alluded to above, the School of Law is fortunate to be associated with a number of prominent legal figures on both sides of the Atlantic. These include the Hon. Judge Joseph Greenaway of the US Court of Appeals for the Third Circuit, Larry Hammond of Osborn Maledon PA, Phoenix, Arizona, Professor Lynda Warren, Emeritus Professor of Environmental Law at the University of Aberystwyth, Professor Mike Hibbs of Shakespeares' LLP, Birmingham, Mark George QC, James Kousouros of Kousouros Law Offices, New York City, and Judge Lisa Curcio of the Chancery Division of Circuit Court of Cook County, Chicago, Illinois. Most recently **Professor Julian Killingley** has secured, in principle, the agreement of several senior judges to contribute to a symposium on judicial recusal, to be organized by the School of Law and hosted by the University in 2014. The judges include Sir Grant Hammond, President of the New Zealand Law Commission and member of the NZ Court of Appeal, Lord Roger Toulson, Justice of the UK Supreme Court, and the Hon. Michael Kirby, formerly Justice of the High Court of Australia

The School also has links with the Maurer Law School at the University of Indiana, the University of Oklahoma College of Law at Norman and Hofstra Law School in New York city.