

STATEMENT OF PRINCIPLES OF ETHICAL RESEARCH PRACTICE (JANUARY 2009)

The SLSA Executive Committee intends that this Statement of principles of ethical research practice will become a living document, that is, one that is the subject of debate, review and change. We welcome comments on this Statement from members of the UK Socio-Legal Studies Association (SLSA) and the wider socio-legal research community. This Statement of principles of ethical research practice has been drawn up and revised by successive SLSA Research Ethics Sub-Committees. It has been approved by the SLSA executive and has been subject to consultation with the wider socio-legal community, including the SLSA membership.

This Statement has been drawn up with reference to the ‘Statement of Ethical Practice for the British Sociological Association’ (May 2004) and the ‘Economic and Social Research Council Research Ethics Framework’ and should be used in conjunction with other ethics guidance appropriate to each specific research project.

PREAMBLE

The aim of this Statement is to encourage the production of ethical socio-legal research. The Statement emphasises the importance of integrity and quality in conducting research and also the value we attach to collegiality in the socio-legal community. This Statement provides guidance also for socio-legal researchers who conduct funded research and who will have to communicate to research funders how issues of ethical socio-legal research practice are addressed in their project. In addition, it provides a reference point for socio-legal researchers who take research proposals through their university’s research ethics framework approval procedure in conjunction with other ethical frameworks and codes. The Statement aims to encourage socio-legal researchers to take responsibility for their own ethical research practice.

AIMS, SCOPE AND IMPACT OF THE STATEMENT OF PRINCIPLES OF ETHICAL RESEARCH PRACTICE

Principle 1: Members of the SLSA should be familiar with and should consider the Association’s Statement of Principles of Ethical Research Practice when commissioning, supervising, designing, conducting, writing and publishing or presenting research.

1.1. Aims.

- 1.1.1. The aim of this Statement is to alert members of the Association, funders of socio-legal research and institutions, both employing and other, to issues that raise ethical concerns and to indicate potential problems and conflicts of interest that might arise in the course of research activities.
- 1.1.2. This Statement does not set out to be comprehensive or to provide a set of recipes for resolving ethical choices or dilemmas. For that reason, the spirit of the Statement is as important as the principles it espouses. It is recognised that it is often necessary to make choices on the basis of competing principles and personal values, and the interests of those involved. Departures from the principles set out here should be the result of deliberation and should be rendered explicit.
- 1.1.3. This Statement is intended to help members and others, particularly funders, to be aware of the ethical issues that may arise in socio-legal work, to encourage socio-legal researchers to reflect on their practices and encourage their colleagues to do so. The effectiveness of this Statement in achieving the aims set out above rests ultimately on regular use by socio-legal researchers, on active reflection and on discussion of their research practice.

1.2. Scope.

1.2.1. Socio-legal studies embraces disciplines and subjects concerned with law as a social institution, with the social effects of law, legal processes, institutions and services and with the influence of social, political and economic factors on the law and legal institutions.

1.2.2. Socio-legal research is diverse, covering a range of theoretical perspectives and a wide variety of empirical research and methodologies.

1.3. Impact.

1.3.1. Where principles are directly applicable to a situation they should guide a member's conduct. Where they are not directly applicable, members should act in the spirit of the Statement.

1.3.2. Members should encourage colleagues, including all socio-legal researchers under their supervision, to become familiar with the principles stated here and to ensure that they are understood.

1.3.3. The Statement is also intended to communicate the ethical position of socio-legal researchers to others, especially those sponsoring or affected by socio-legal research.

1.3.4. The Association will, for its part, communicate its commitment to the principles contained in this Statement through its website, by general dissemination of the Statement and through its educational programmes.

OBLIGATIONS TO THE ACADEMIC AND WIDER COMMUNITIES

Principle 2: Socio-legal researchers should consider at all times their responsibility for maintaining the reputation of socio-legal studies as a valid contribution to scholarship.

2.1. The integrity of the discipline.

2.1.1. Members should report their findings accurately and truthfully.

2.1.2. Members should publish and disseminate the results of socio-legal research where appropriate for the benefit of the community. This includes publishing in a variety of media including popular journals.

2.1.3. Socio-legal researchers should make the results of investigations available to those they have researched.

2.2. Competence.

2.2.1. Members should not undertake work of a kind that they are not competent to carry out and should not ask socio-legal researchers under their supervision or guidance to carry out work which the socio-legal researchers are not competent to carry out, or they themselves are not competent to supervise.

- 2.2.2. Members should have due regard for the weight to be attached to other people's research and encourage others to do the same.
- 2.2.3. Members should satisfy themselves that the methodologies used are appropriate to the research to be carried out.

OBLIGATIONS TO COLLEAGUES

Principle 3: Principal socio-legal researchers, supervisors and others responsible for research staff and postgraduate students, should ensure that the project team is aware of this Statement.

- 3.1 Where a socio-legal researcher has primary responsibility for a piece of research, that socio-legal researcher should bring the ethical guidance contained in this Statement to the attention of other socio-legal researchers who are working on the project, particularly where those socio-legal researchers are less experienced. The socio-legal researcher with primary responsibility for the project also has a duty to raise, explore and provide guidance on any potential ethical issues with other members of the research team.

Principle 4: Socio-legal scholars should credit appropriately contributions in research collaboration.

- 4.1. Members should always acknowledge the contributions of colleagues to research work. In particular, where junior colleagues, including research assistants, have significantly contributed to collecting data their role should be acknowledged in any publication arising from that research. Colleagues are advised to discuss the arrangements for accrediting contributions in published work before embarking on research.
- 4.2. The names of everyone who has made a substantial contribution to a piece of research should be credited in publications and any other outputs that arise out of that research and, conversely, the names of those who do not make a substantial contribution should not appear in publications.
- 4.3. Members should take care to acknowledge the publications or other sources of ideas they have used in their work.

OBLIGATIONS TO SUBJECTS AND PARTICIPANTS

Principle 5: Principal socio-legal researchers have both legal and ethical responsibilities to ensure the safety and well-being of members of their research team as well as their own safety and well-being.

- 5.1 Research staff should not be placed in a position where the research they are conducting carries an appreciable risk of physical harm or harm to their own mental well-being. In exceptional cases, the merits of the research may justify taking some such risks. In such cases it is the responsibility of the principal socio-legal researcher to ensure that the risks of harm are fully understood and freely consented to by the staff concerned and that all reasonable steps to ensure the safety and security of those individuals have been taken.
- 5.2 Principal socio-legal researchers are responsible for ensuring that the working hours and conditions of their research staff are consistent with the employer's legal obligations, and that any expectations of staff are commensurate with the skills and abilities of the post-holder.

Principle 6: Foundations of research relationships.

- 6.1. Socio-legal researchers in the course of their activities enter into personal and moral relationships with those whom they study closely, i.e. the research participants, be they individuals, households, social groups or corporate entities.

- 6.2. Whenever possible, research relationships should be characterised by trust.
- 6.3. In some cases, where the public interest suggests otherwise and particularly where power is being abused by those being researched, obligations of trust and protection, for instance, through protecting the anonymity of research participants, may weigh less heavily. Nevertheless, these obligations should not be discarded lightly (particularly when there is a disparity of power in relationships with participants that favours the socio-legal researcher).
- 6.4. Members should strive to protect the rights of those they study, their interests, sensitivities and privacy, while recognising the difficulty of balancing potentially conflicting interests.
- 6.5. The ethical obligations in this Statement apply throughout research, including where there is any change in the research that engages new ethical issues.
- 6.6. Members are not absolved from responsibility for the well-being of research participants by any general consent given by such research participants.
- 6.7. When designing research, including identifying research participants, and disseminating research findings socio-legal researchers should give due consideration to principles of diversity and inclusivity. These principles may include consideration of the ethical implications of excluding participants from research on the basis of their class, gender, ethnicity, age, sexual orientation, physical ability, race or religious belief.

Principle 7: Socio-legal researchers normally should obtain the consent of participants in empirical research and should ensure that their consent is based on full knowledge of all material matters including the purpose of the research, funding sources and intentions regarding dissemination.

7.1. Obtaining consent.

- 7.1.1. As far as possible, socio-legal research should be based on the freely given and informed written consent of those studied. This implies a responsibility on the socio-legal researcher to explain as fully as possible and in terms meaningful to participants, what the research is about, who is undertaking and financing it, why it is being undertaken, what risks, if any are involved, what the research methods are and how it is to be disseminated. In the case of large-scale survey research, or other cases where a face-to-face meeting with participants is not feasible, this may be done by a covering letter sent to participants.
- 7.1.2. In some situations, for instance where there are insurmountable language barriers encountered during anthropological fieldwork, it may not be possible to obtain written consent and hence verbal consent may be sufficient.
- 7.1.3. Where data is gathered through observation of behaviour occurring in public there may be no expectation of privacy and hence no need for consent from all of the observed people.
- 7.1.4. Candour and frankness about the source of funding may create problems of access or co-operation for the socio-legal researcher but concealment may also have serious consequences. The emphasis should be on openness.
- 7.1.5. Research participants should not be under the impression that they are required to participate and should be aware of their right to refuse participation or revoke consent during the progress of a research project though the socio-legal researcher and the research participants should be aware of the potential negative effects of any such revocation on the research. Special care should be taken where research participants are vulnerable.

7.1.6. Research participants should ideally be given the opportunity to see transcripts of interviews or research notes and/or given drafts of any conclusions drawn from the data they have provided for comment.

7.2. Consent by proxy.

7.2.1. Where the participant's mental capacity to consent is in doubt for example because of mental illness or learning disability, the socio-legal researcher should discuss the research with an appropriate proxy before proceeding. Socio-legal researchers should be aware of obligations in relation to obtaining consent for 'intrusive' research in relation to research participants who lack mental capacity under the Mental Capacity Act 2005.

7.2.2. Obtaining data from proxies.

Where research participants are children or lack the appropriate level of mental capacity (e.g. because of mental illness or learning disability) to give informed consent to the relevant aspect of the research, proxies may need to be used to gather data. An appropriate proxy should be chosen on the basis of her/his relationship with the research subject. In these situations care should be taken not to disturb the relationship between this person and the proxy. Where it can be inferred that the person about whom information is sought would object to supplying certain kinds of information, the material should not be sought from the proxy.

7.3. Longitudinal research.

7.3.1 It should be borne in mind that, in longitudinal research, consent may need to be obtained on more than one occasion. It may be necessary to regard consent in such circumstances as subject to re-negotiation over time.

7.4. 'Gatekeepers'.

7.4.1. In some situations, access to a research setting is gained via a 'gatekeeper'. In these situations, members should adhere to the principle of obtaining informed consent directly from research participants to whom access is required, while at the same time taking account of the gatekeeper's interest.

7.4.2. Where sponsors/funders also act directly or indirectly as gatekeepers and control access to participants, socio-legal researchers should not devolve their responsibility to protect the participants' interests onto the gatekeeper.

7.4.3. Since the relationship between research participants and the gatekeeper will continue long after the socio-legal researcher has left the research setting, care should be taken not to disturb that relationship unnecessarily.

7.5. Covert research.

7.5.1. Despite the technical advantages of covert research methods, they clearly violate the principle of consent and invade the privacy of those studied.

7.5.2. Covert research may be justified in certain circumstances, e.g. where the risk to the individual research participants is small, where their anonymity is guaranteed, where access to spheres of social life is closed by powerful or secretive interests and where it is impossible to use overt methods to obtain essential data. The overruling principle in the conduct of such research is whether the method is justified in the public interest.

- 7.5.3. In covert studies, it is particularly important to safeguard the anonymity of research participants (subject to Section 6.3). Ideally, where informed consent has not been obtained prior to the research taking place it should be obtained before disclosing material wherever possible.

Principle 8: Socio-legal researchers have obligations regarding respect for anonymity, privacy, confidentiality and data protection.

8.1. Confidentiality.

- 8.1.1. There may be some circumstances in which the objectives of the research require waiving the anonymity of research participants. However, unless such an alternative arrangement has been agreed upon by a research participant and the socio-legal researcher, data about or from a research participant, for instance statements made by an interviewee, are to be treated as confidential and, in the case of attributable statements, should not be attributed to the interviewee without their permission. In regard to research in which personal data is collected via means other than direct disclosure, e.g. historical research, the principles of confidentiality and anonymity should not be departed from without careful justification.
- 8.1.2. Socio-legal researchers should not give unrealistic guarantees of confidentiality and anonymity. In some cases, it may be necessary to decide whether it is either necessary or even appropriate to record certain kinds of sensitive information. In drafting and concluding confidentiality agreements researchers should consider that in some cases they may be subject to legal requirements to disclose information obtained during the course of the research which pertains to serious criminal offences being committed (see below principle 8.3).
- 8.1.3. Where data are collected about third parties, rather than directly from them, for instance in historical research, the objectives of the research may require not to keep those third parties anonymous. In some situations socio-legal researchers may decide not to keep the identity of research participants anonymous, where participants have consented to this, in order to enable replication of studies and critical peer review.

8.2. Preserving the anonymity of data.

- 8.2.1. Appropriate and practicable methods for preserving the anonymity of data should be used. These may include the removal of identifiers, the use of pseudonyms and other technical means to break the link between data and identifiable individuals such as ‘broadbanding’¹ and ‘micro-aggregation’.²
- 8.2.2. Members should prevent data from being published or released in a form which would permit the identification of research participants. Where potential informants and research participants possess a combination of attributes which make them readily identifiable it may be difficult to disguise their identity without introducing an unacceptably large measure of distortion into the data. In circumstances where it is difficult to protect the anonymity of informants and research participants, they should be informed of this fact in advance where possible.
- 8.2.3. The purpose and ultimate distribution of filming or recording for research purposes should be explained clearly to its subjects. Additionally, devices such as tape recorders or video cameras should be used only with the subject’s consent.

¹ The aggregation of individual data into larger categories.

² That is the replacement of individual data by averages of small aggregates.

8.3. Legal obligations.

8.3.1. Socio-legal researchers should be aware of the legal status of researcher/subject confidentiality, where the relevant jurisdiction(s) provide clear rules on this, including those where fieldwork is being carried out. Research participants should be made aware of the risk, with reference to certain obligations,³ the socio-legal researcher may be required to give evidence or reveal documents, which may make it impossible for socio-legal researchers to keep certain information confidential without breaking the law. Socio-legal researchers may have to consider legal obligations of various national jurisdictions where internet research involves data collection in more than one country.

8.3.2. Socio-legal researchers should be aware of obligations arising from data protection, privacy and intellectual property, such as copyright laws in relation to the collection, storing and publication of data.

8.4. Institutional context.

8.4.1 Institutions with which socio-legal researchers are affiliated should make themselves aware of the legal status of researcher/subject confidentiality in the jurisdiction. This awareness should inform institutional guidance given to socio-legal researchers at the commencement of their projects with reference to data dissemination, storage, publication, rights of research subjects, sponsors, funders and organisations employing socio-legal researchers.

8.5. Shared data.

8.5.1. Any person or organisation given access to data arising from research must be made aware of any obligations in relation to confidentiality and safety attaching to those data. Where there is a possibility that data may be shared with other researchers, and research participants have not consented to this, such sharing, and any other new uses to which the data will be put, should be discussed with them, and consent obtained.

8.5.2. Socio-legal researchers should respect the confidentiality of data disclosed to them by other researchers.

SOCIAL OBLIGATIONS

Principle 9: Socio-legal researchers should be aware of wider social responsibilities in conducting and publishing their research.

9.1. While socio-legal researchers are committed to the advancement of knowledge, that goal does not, of itself, permit researchers to override the legitimate interests of others.

9.2. Members must satisfy themselves that the potential benefits of any study, whether in terms of direct social or other benefits to any group, or to society as a whole, or in terms of the work's contribution to the furtherance of knowledge, outweigh any social risks for the research participants, before embarking upon it.

9.3. It is incumbent upon members to be aware of the possible political and social consequences of their work for the individuals and groups alluded to in their work.

³ Such as under Freedom of Information Acts, Data Protection Acts, Human Rights provisions as well as copyright and libel laws.

Principle 10: Socio-legal researchers should strive to ensure that funded research and consultancy retains intellectual and ethical integrity and that their limitations and those of the research produced are made clear both in submitting tenders and in publishing results.

10.1. Tendering and contracting.

- 10.1.1. In the preparation of proposals for research, members should be honest and candid about their qualifications and expertise, the advantages and disadvantages of the various methods of data collection and analysis being employed. They should not conceal factors likely to affect the satisfactory completion of a research project. Socio-legal research projects should not be undertaken where time or resources are known to be inadequate. Members should neither under-price nor over-commit themselves in an attempt to secure a contract.
- 10.1.2. Members should clarify in advance the respective obligations of sponsors or funders and socio-legal researchers, where possible in the form of a written contract. They should clarify the methods used to collect and analyse data. They should refer the sponsor/funder to the professional codes to which they adhere.
- 10.1.3. Socio-legal researchers should always require that their professional independence be recognised and should resist restrictions on their freedom to disseminate research findings.
- 10.1.4. Members should not promise or imply acceptance of conditions which are contrary to their professional ethics or competing commitments.
- 10.1.5. Members should notify the sponsor or funder of any proposed significant departure from the terms of reference of the research.
- 10.1.6. When financial support or sponsorship has been accepted, members should make every reasonable effort to complete the research on schedule, including reports to the funding source.

10.2. Conflicts of interest between socio-legal researchers and sponsors and funders.

- 10.2.1. A common interest in providing knowledge exists between sponsors or funders and socio-legal researchers where the aim is to provide knowledge. Conflicts of interest may arise when the sponsor or funder would like to see particular findings to be generated from the research, where sponsors or funders produce detailed specifications or encourage socio-legal researchers to prescribe particular courses of action. Socio-legal researchers should be wary of constraints on their academic independence and particularly on their ability to reach their own conclusions or to publish their results.
- 10.2.2. Members should attempt to ensure that sponsors or funders appreciate that socio-legal researchers have obligations to research participants, academic colleagues, the wider socio-legal community and society at large. This includes a duty to protect the anonymity of research participants where an undertaking to this effect has been given, though there may be exceptional circumstances where such disclosure of the identity of a research participant is ethically indicated or legally required.

10.3. Advising sponsors and funders.

- 10.3.1. In their capacity as applicants, advisers or representatives of sponsors or funders members should encourage them to use a system of open and competitive tendering.
- 10.3.2. In their capacity as consultants to sponsors or funders, members should advise that clients should provide a detailed specification for the research, listing the criteria for judging applications and a guide price as to the maximum funding available. They should invite applications from as wide a group as possible, including through dissemination systems such as that operated by the SLSA.

- 10.3.3. Sponsors or funders should also be encouraged to provide an evaluation of both successful and unsuccessful proposals submitted and to give socio-legal researchers a reasonable time to complete the research before inviting them to draw conclusions.