NOTE OF CHATHAM HOUSE RULES SEMINAR ON PEER REVIEW IN LEGAL AND ADVICE SERVICES
Hosted By The Advice Services Alliance
24th February 2004

1. John Seargeant gave a presentation highlighting the main issues and themes arising from his report "Peer Review in Legal and Advice Services".

2. The brief for the report was to examine who was doing what in terms of peer review within the sector.

3. Across the sector lots of different things are being done but there are a number of shared characteristics:

(i) The main method in use is case file review, principally of closed cases. This enables the reviewer to track the case from beginning to end, and to sample work to get a reliable perspective. It is also less intrusive than contemporaneous methods of peer review.
(ii) The use of guidance frameworks is widespread. The frameworks enable the reviewer to take a common approach. Reviews can be compared and this promotes confidence in the system. Furthermore, it gives transparency to the process so that the reviewee can see how the judgement was made.
(iii) All systems have some kind of standardised measurement or scoring system.

4. Differences:

(i) The purpose for peer review varies. It might be to improve quality or to regulate membership of a network or determine who is funded by the LSC. If the purpose is to improve quality, a strong feedback element is necessary.
(ii) The extent to which there is commentary ie qualitative information on the assessments, varies considerably
(iii) The strongest held and most divergent views relate to the question of who is competent to be a peer reviewer. Different organisations have different views on who is most appropriate and use different requirements eg recognised experts in their fields, qualification as a solicitor, qualification to supervise LSC contracted work, past experience of practice, current experience of practice, experience of managing. There is common agreement that peer reviewers need to be able to demonstrate that they have the appropriate skill and understanding to be capable of making judgements.
(iv) Some organisations review several subjects at once whereas some review only one. This influences who they choose to do the review and how long they spend.
(v) Methods of sampling and balancing are varied. There is still lots of tweaking and reflecting going on here.

5. Peer review has a number of benefits: It is a better quality measure than quality assurance and is the best way to check quality of advice; it promotes stakeholder confidence; it is less burdensome and time-consuming for the advice supplier than audit processes.

6. However, quality assurance is not all bad. Aspects of the Quality Mark do cross-correlate with the results of peer review. Therefore it is possible to use peer review to test quality assurance measures. It may be that as spending on peer review increases, spending on quality assurance will go down as a result.

7. A final benefit of peer review is that it has high buy-in potential. It is not as expensive as some people think and the day will come when individual agencies can hire someone to do a one-off peer review.

8. There is still lots of thinking to be done about peer review:

(i) There needs to be more experimentation with methods other than case-file review. Contemporaneous methods are perceived to be more difficult but the time has come to test them.

(ii) There needs to be a much more transparent debate on the issues arising out of peer review. Although there are problems with confidentiality, peer review techniques and results should be more transparent and open, so we can have a proper debate about what constitutes good work.

(iii) Recruitment of peer reviewers, particularly in the nfp sector, is a big issue. We need to think about how to do it because if we can't get the people we can't do it.

(iv) The report contains basic information about the cost of peer review. We need more information so that we can have a discussion about the real costs of peer review compared to those of quality assurance systems.

Open Debate

What is the purpose of peer review and what is the role of feedback?
Chair: Richard Jenner

9. How do you get peer review accepted when the quality of advice is found to be poor? This is a problem the LSC have had in London with its peer review of immigration contract holders where the aim was to improve quality by removing the poor providers from the system first. The process is geared towards penalty and despite employing the best in the field as consultants and having an in-house team, is very heavy-handed.

10. There is a built in distance between suppliers and the LSC. They are not seen as part of the same club in the way that Citizens Advice are.

11. One way of giving further legitimacy to a peer review system is to have a verification panel as Citizens Advice Scotland does. This panel is chaired by a solicitor and has a panel of members who vary. These members have expertise in a number of different areas of advice. The CAS peer reviewers select 30 cases for review; the verification panel looks at four of these to check that they agree with the reviewer's assessment.

12. If you want the reviewed agency on side, you have to get people involved by having timely and intelligent feedback. If work has been peer reviewed for costs assessment purposes, the feedback cannot be just the results of the cost assessment six months later. Furthermore, it is much better for the reviewer to go the agency and be seen. This increases the likelihood that people will accept criticism.

13. However, the LSC's peer review of immigration has been worth it; as a result they have cut 270 contracts and recovered £10 million, therefore the cost has been more than offset by the savings made.

14. There is an unresolved issue about where feedback should be directed – to the manager of the agency, or to the caseworker involved – and how the peer reviewer should explain and justify the judgement involved. Citizens Advice recognised early on that you can't just assess without doing follow-up. That's why they have development officers who are assigned to bureaux after the assessment process to help them act on the feedback and create an action plan for the bureau.

15. The LSC conduct the peer review process off-site because they don't want their peer reviewers to be influenced by external factors. They need to ensure the process is fair. When peer reviewers are interviewed, many have strong views on what an efficient office should look like. It follows that if they visit suppliers, they will be influenced by what they see.

16. But there is training on how not to be influenced when going onto the territory of others. It's not an insurmountable problem.

17. The issue is purpose. Citizens Advice's role is supportive and developmental. The LSC are policing how public money is spent. That's why they have different attitudes to visiting the premises.

18. The LSC does have a fiscal responsibility but they do also want to improve quality. They want to get to a stage in three years' time where they are no longer doing such heavy-handed audits. They want to provide support to suppliers.

19. In order to improve quality of advice, you have to ensure that the agency has the capacity to act on the results of the quality assessment. This is most likely to be achieved by using a fully integrated assessment process involving on-site assessment. It is likely that the agencies with the poorest quality advice have the least capacity to improve it. Such agencies will need a hands-on approach with full follow-up if they are to benefit from the quality assessment process.

20. The best way to improve a service is to take a full report back to the agency. The LSC would like to do this but doesn't have the resources. However, they are investigating how best to make use of their findings. They are working on the development of national benchmarks and are considering putting on training courses to cover common mistakes that peer reviewers find on files.

21. For the reviewed agency to feel that the reviewer's findings are valid, it is particularly important that they have confidence in the file sampling procedure. It needs to be representative of the agency's work. It's therefore important to ask: "Do you recognise your agency in this sample?"

22. The LSC is not set up to deal constructively with the results of peer review. On the whole, advice agencies fall into three categories: those which on the whole do good quality work, those which aren't really good enough but are capable of improvement, and those which give bad advice and aren't capable of improvement. As the LSC is set up as a regulatory body, it can deal with

the Category 1 suppliers because they can be left alone; it can deal with the Category 3 suppliers by cutting their contracts; however, it cannot work with the Category 2 suppliers because it does not have a developmental role. This is a real problem because these are precisely the suppliers that the LSC needs to develop.

23. But it shouldn't be the role of the LSC to do development work. That is the role of the networks.

24. You can't assume that peer reviewers are the gold standard, particularly when a sector is going through big changes. In criminal defence work, ten years ago, police station work was pretty much all bad but peer reviewers would probably have judged it to be fine. There is therefore the danger that peer reviewers can reinforce a mediocrity of aspiration.

Who is a peer?
Chair: Ann Lewis

25. Is a peer someone with the same skills and experience, ie as the dictionary would define the term or is it actually someone with more skills and experience?

26. There is also the question of whether standards are national or local. When doing research into standards for the Public Defender Service in Swansea, one attitude was "We don't want you bringing your London standards down here."

    When looking at police station work, the issue of using accredited representatives ie specialist non-solicitors as peer reviewers of solicitors' work was problematic. It meant that solicitors did not see the process as credible. The issues are different depending on the purpose of the process: support, gatekeeping or discipline.

27. It is very important to have an external element. So, for example, the CAB service should have the benefit of expertise from outside and solicitors should have an input from non-solicitors. The *Quality and Cost* research did not use non-solicitors to review solicitors because solicitors would not accept the judgement of non-solicitors. This is not the right attitude, as it can encourage complacency. For example, in the area of welfare benefits, a lot of solicitors aren't very good and they have a lot to learn from non-solicitor advisers. However, when solicitors did specialise in welfare benefits work they hada significant and beneficial impact on the sector. Overall, there is a massive benefit to be had from letting light in from other areas.

28. That's true but there will always be the problem of credibility and acceptability to those who are being reviewed. This applies as much to peer review for gate-keeping purposes as to peer review for quality improvement. We could begin a programme of education about this but it would take a long time.

29. A big issue is what you can expect from a generalist and what you can expect from a specialist. It's very hard to decide this because specialists can have unrealistically high expectations of generalists. Specialists can even have conflicting expectations of each other. This became clear when the law society was developing its criteria for panel membership. The specialists consulted often couldn't agree and set standards too high.

However, it is the case that generalists do miss issues. This has been demonstrated most recently in the Richard Moorhead and Avrom Sherr's report *An Anatomy of Access*. Therefore, it is really important to establish what is a reasonable standard.

30. We shouldn't undervalue the skills of generalists. When generalists review specialists, they also pick up issues that have been missed because specialists don't see problems in the round in the way that generalists do. The problem of missed issues applies to everyone because no one knows what they don't know. We shouldn't see this as a hierarchy of specialists and generalists – both have equally valid roles in peer review.

31. There is a lot more to good advice than just the technical side. Quality of advice is only one of a range of issues affecting the overall quality of an agency, including:
    - Access
    - Who gets advice
    - How people are treated
    - Quality of service
    - Outcomes
    - Identifying and raising social policy issues

    A "holistic" assessment of an agency should include all of these things. It is therefore advantageous to mix people up when it comes to peer review. In this way people can learn about the broader aspects of giving good advice.

32. Agency managers are often glad to have someone come from outside to do the review. Reviewers often confirm what managers know but without being familiar with the foibles of the advisers or the clients.

33. Peer reviewers need lots of skills. You need to have technical expertise to pick up where mistakes have been made but you also need development expertise in order to see what's gone wrong in the organisation and identify how to make it better. You therefore need technical advice skills and management skills.

34. The LSC does use peer reviewers from the nfp sector because they recognise that the sector has lots of expertise. However, there is a problem of recognition. Hopefully, once National Occupational Standards have been developed, that will no longer be a problem.

35. Another issue is whether peer reviewers have to be currently practising. It can be problematic if you're not practising but there are ways round it. Shelter uses a mix of people, some of whom are practising and some of whom are not. You have to ensure that those who aren't practising have regular training and reading time built into their timetable to keep them up-to-date. So long as you have a reputation and demonstrate an ongoing grasp of the law, there shouldn't be a problem. Ex-practitioners also have a greater chance of having experience in management, development, training and other non-practitioner skills.

36. But in order to be credible, it's important to be still practising. It makes you one of them and reduces the distance between you.

37. Citizens Advice wanted to have people who are still practising but it wasn't practical. There is now one quality of advice assessor who is still in practice but so far there doesn't seem to be any particular advantage in this.

38. The LSC feels that people must remain in practice because the law can change to so quickly and having practical experience is the only way to stay up-to-date. Recruitment hasn't been a problem so far. Although the criteria are high, they always have lots of applicants.

What is the future for peer review and for other quality measures?
Chair: Shanta Bhavnani

39. Age Concern is doing some work on using telephone recording, live listening in on telephone calls and contemporary observations of interviews as quality evaluation tools. These methods are particularly useful for advice at the generalist end of the spectrum, and in particular for meeting support needs. However, there can be a lot of reservations from staff involved in being evaluated in these ways.

40. It is important to remember that another purpose of peer review is research. LSC research using mystery shoppers and peer review of the advice given to them is a good tool for measuring quality of advice, quality of care and access issues. It also identifies the potential gap between quality of service and quality of advice eg when the service is friendly but the advice is bad. It's a good research tool when results are anonymised, but there may be resistance by staff and agencies if results were used as evidence against individual agencies.

41. NOS might provide a valuable framework for assessing quality of advice, and also the adviser's skills in enabling the client to actually use the advice given.

42. A current research project is looking at a model which involves peer reviewing quality of advice, and then doing a follow-up interview with the client to get a qualitative assessment of their perception of the value of the advice given, the quality of client care received, whether the client has been able to use the advice and the outcome. There seems to be a correlation between the client's impression of the advice given, and the peer reviewer's assessment of the quality of that advice.

43. Permission from clients to review files, and to be approached for a follow-up interview, may be a problem with such methods. However, it was suggested that clients usually don't mind – the barrier is often the advisers and the agency who think that the clients will mind. This was the finding of the team doing research into the family mediation pilots for the LAB.

44. Experience of evaluating work done by the Public Defender Service shows that what actually happens is often that peer reviewing is reduced to what is actually do-able, usually file review. The main problems with evaluating work done in a non-office setting (such as tribunal representation) were practical ones such as timing, and whether hearings actually went ahead on the day. It is easier to assess an agency's quality of work on this basis than an individual adviser's.

45. John Seargeant's report is valuable in setting out the state of play at present, and identifying the systems currently being used, and which work to some

extent. But there is some anxiety about what will happen in the future, and whether pressure will be imposed on the advice sector to audit the quality of outcomes rather than the quality of advice. This is more problematic. We need to ensure that peer review models to evaluate the quality of advice are well embedded into what networks and agencies do now.

46. The issue of evaluating outcomes is very complex, and there is a lack of consensus and understanding around what an outcome actually is, and how to measure outcomes. Some work needs to be done on definitions, and to relate outcomes to peer review and quality of advice.

47. There is concern about the potential use of benchmarking – using the expected outcomes in any given situation in a predictive capacity and a quality measure.

48. A general plea was made to all agencies and networks to publish the work they are doing on peer reviewing more quickly so that models and information are in the public domain, to enable development and improvement.

49. It is important to remember that in an advice agency in the real world, other things impinge on the need to evaluate quality and peer review – there is a need to balance funding, time spent on each client and time spent on good case records. Local authorities are looking for volume of clients rather than a Rolls Royce service, so there will always be a tension between access and quality.

50. However, there may be a way to reconcile the potential tension between quality of advice and quality of outcomes, a middle way to both assess what is happening and learn from it.

51. The LSC is currently looking at outcome assessment. It is easy to make a link between quality of advice and outcomes in money matters; current thinking is to call this a “quality profile” and include a wider range of factors than just outcomes. The LSC intends to use case outcomes as a first indicator of quality – if outcomes look OK there will be no need to do more detailed peer review or audit processes. “Odd” outcomes will indicate the need for more detailed quality evaluation through peer review and audit. However the link between outcomes and quality of advice is more variable in relation to non-money issues.

52. How can we work together as a sector to develop work on quality of advice assessment? How can the LSC support this work? It needs resources, co-operation and research. ASA is engaging in a consultation process about how best to take this forward.