

Independent Peer Review of Legal Advice and Legal Work

The Advice Services Alliance's response to the
Legal Services Commission's consultation paper

1 About the Advice Services Alliance

- 1.1 The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice services in the U.K. Our aims are to:
- Champion the development of high quality information, advice and legal services;
 - Ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage;
 - Encourage co-operation between organisations providing such services;
 - Provide a forum for the discussion of issues of common interest or concern to advice organisations.
- 1.2 Full membership of ASA is open to national networks of independent advice services in the U.K. Current full members are:
- Advice UK (formerly Federation of Information and Advice Centres)
 - Age Concern England
 - Citizens Advice (formerly National Association of Citizens Advice Bureaux)
 - Citizens Advice Scotland
 - DIAL UK (the disability information and advice service)
 - Law Centres Federation
 - Scottish Association of Law Centres
 - Shelter
 - Shelter Cymru
 - Youth Access
- 1.3 Our members represent over 2,000 organisations that provide a range of advice, legal and other services to members of the public. Most of these organisations offer services within a local area, but some of them are regional or national. They are largely funded through public sector grants and contracts, and charitable fundraising. With some limited exceptions, services are offered to users free of charge and are focused on areas of law which mainly affect poorer people e.g. welfare benefits, debt, housing, employment, immigration, education and community care (now commonly referred to as 'social welfare law').
- 1.4 This response has been drafted following consultation with our full members. However, it may not reflect our members' views in their entirety and we are aware that some members will submit their own response.

2 Introductory comments

- 2.1 We welcome the opportunity to respond to this consultation.
- 2.2 ASA has taken a keen interest in the development of peer review for legal advice and has for some time advocated its wider use by the LSC.
- 2.3 We agree that the requirements of the Quality Mark are useful for the establishment of a well-run organisation. We also agree with the consultation paper that whilst some of the requirements can contribute to the provision of good quality advice they are no guarantee of it.

- 2.4 It is our opinion that peer review is the best mechanism available to the LSC to look directly at the quality of work of a supplier. We are therefore pleased that it is seeking the views of the sector on its methodology. We do have some comments and criticisms about the detail of the scheme but despite those, we are fully supportive of the LSC's efforts to extend its use of peer review.

3 Consultation Questions

Do you agree that the process of Independent Peer Review is independent from the LSC? If you disagree, please provide reasons.

- 3.1 We agree that the process of peer review is independent in the sense that the reviewers are able to exercise freely their judgement about the quality of work they review.
- 3.2 However, given that the LSC maintains control of the peer review process and determines when reviews are carried out, we do not think it is right to say that it is independent from the LSC. It is more accurate to say that the process is conducted at arm's length from the LSC and, in our opinion, this arrangement is satisfactory. Furthermore, we feel that the involvement of Institute of Advanced Legal Studies (IALS) ensures that there is sufficient distance between the LSC and the reviewers.

Evaluation

- 3.3 However, given that the LSC has been developing and using peer review for over five years and that its use is funded by public money, we think that the whole process should be independently evaluated. The LSC should appoint an independent organisation to establish what its objectives are in using peer review, and whether it is meeting those objectives. The evaluation should also consider whether the process is managed as efficiently as it can be and whether any financial savings can be made.
- 3.4 Following this evaluation, the LSC may decide that it is appropriate to re-tender the project. In any event, we think that the LSC should consider this so that it can determine whether IALS is still the best organisation to manage the process. In our view, these measures would give confidence that the scheme is independent and is being well run by the best people.

Do you believe there are any additional criteria that may enhance the peer review assessment?

- 3.5 We do not have any additional criteria to suggest. However, we feel that the existing criteria could be improved upon by reference to criteria that have been developed in other parts of the sector.
- 3.6 As an example, we are not sure the distinction between "the advice" and "the work" is useful. It suggests that advice is only given at the start of a case. In fact, advice and work run alongside each other throughout a case and it would be more helpful if the criteria reflected this. Other criteria in use in the sector require the reviewer to look at the case as a whole and consider factors like accuracy and effectiveness throughout.
- 3.7 We are enclosing with this response a copy of ASA's report "Peer Review in Legal and Advice Services" which contains in Appendix 1 the criteria used by others in the sector such as Shelter and Citizens Advice. We also enclose our "Practical Guide to Peer Review" which on pages 12-13 contains a suggested framework based on

criteria in use within the sector. We suggest that it might be useful for the LSC to look at these criteria with the peer reviewers to see whether they would find them useful.

“Communication with the client” criterion

- 3.8 We agree that communication is an essential element of an adviser’s skill, however, we are not convinced that a reviewer can really assess it by reference to files alone. If the LSC is really interested in reviewing advisers’ communication skills, we think it would be a good idea to explore the possibility of carrying out contemporaneous reviews ie sending peer reviewers to observe advisers interviewing clients.
- 3.9 We understand that contemporaneous review is resource intensive and that it raises issues of confidentiality, however, we feel that there are some areas of law in which communication with the client is particularly important.
- 3.10 For example, when dealing with asylum applicants or victims of domestic violence, an adviser must ensure that the client feels able to disclose information which they may find embarrassing or distressing. It is unlikely that a reviewer will be able to judge an adviser’s ability to do this from the file alone.
- 3.11 Given the sensitive nature of the areas of law mentioned, we understand that observation is unlikely to prove a workable methodology. Despite this, we think that the LSC should research what options exist for assessing communication skills and consider how they could be used.

Are the ratings sufficient to differentiate between supplier performance?

- 3.12 It is difficult to devise a system of both rating and feedback that satisfies the need to distinguish between suppliers and the need to supply them with useful information that will help them to improve the quality of their work. The LSC has made a good attempt at this. However, we do feel that the feedback element needs to be significantly strengthened so that the benefits of peer review for individual suppliers are not lost.
- 3.13 We understand that rating is necessary for the LSC’s purpose of ensuring that public funds are not being spent on poor quality work. As the consultation states, one of the points of reviewing work is to ensure suppliers are meeting Clause 3.2 of the General Contract Standard Term. We therefore accept that there must be a rating system capable of demonstrating that suppliers are or are not meeting the required standard. Furthermore, rating also allows differentiation between suppliers for purposes such as the preferred supplier pilot.
- 3.14 However, given the usefulness of peer review in providing feedback to suppliers on how they can improve their work, we are concerned that ratings distract from the more detailed and constructive commentary that the reviewer is able to give.
- 3.15 Part of the problem is that peer review is a qualitative process and that expressing the results as ratings turns it into a quantitative one. Whilst this is useful for differentiating between suppliers, it cannot give a complete picture of the quality of work of the supplier.
- 3.16 A way of strengthening the feedback element would be to provide commentary on each criterion against which the files are judged instead of summarising these into positive findings and areas of concern.

Reviewing individual advisers

- 3.17 A second issue which we feel complicates the award of ratings and also causes feedback to be unhelpful is the fact that reviewers review the work of whole departments and not of individual advisers. This means that they may have to give an overall rating on files of very different quality.
- 3.18 Deciding where the tipping point is between work that is competent and work that is below competent is difficult enough when the quality of the work is relatively consistent. When it is inconsistent, it becomes almost impossible.
- 3.19 We therefore take the view that reviewers should review the work (say five files) of each adviser and feedback should be given in relation to each one. This will make reviewers' reports more accurate and feedback more useful.
- 3.20 We understand that there will still have to be an overall judgement about the competence of the department. But we feel that this judgement will be better informed and less distorted if the reviewer is able to look at the work of each adviser.

Are the recruitment criteria set at the appropriate level?

- 3.21 We question whether all reviewers need to be qualified solicitors. In the areas of debt and welfare benefits many of the most experienced practitioners are not solicitors. It is our view that in these areas the LSC should consider employing non-solicitors as peer reviewers.
- 3.22 We also feel that since non-solicitor immigration practitioners have to pass the same exams as solicitors in order to do contracted work, there is little justification for excluding them from peer review work.
- 3.23 We understand that the LSC is concerned that there may be a reduction in the quality of the review work. We also know that solicitors may object to being reviewed by non-solicitors. In order to deal with these issues, the LSC could run a pilot employing non-solicitor reviewers in debt, welfare benefits and immigration. Their performance could be evaluated after a fixed period and then a decision could be made about whether or not to continue with the scheme.

Pay

- 3.24 In order to attract the best people to peer review work and to foster commitment to it, we believe the LSC should pay its reviewers more. Currently the daily rate is roughly equivalent to what an adviser would earn for a day's work under contract. In order to give more incentives to potential reviewers we suggest that the LSC should pay £500 a day.

Are there additional training and assessment mechanisms we should consider?

- 3.25 We do not have any additional training and assessment mechanisms to suggest. However, we are concerned that there should be processes in place for dealing with reviewer fatigue. Reviewing files is repetitive work requiring considerable concentration and we think reviewers should not be called upon to do it too often.
- 3.26 We suggest that the LSC should investigate whether the quality of a reviewer's work drops after a certain number of reviews. If this is the case, the LSC should consider giving its reviewers rest periods. For example, they could have 6 months off for every 18 months they are on call.

Do you agree with the process for ensuring the consistency of the peer reviewers?

- 3.27 We think that the process of monitoring new peer reviewers and of randomly cross-checking reviews is sensible.
- 3.28 However, we are concerned that the process may not be working in practice. We have had the benefit of reading some peer review report summaries. Whilst we understand that it is very difficult to make judgements on the basis of these alone, we do feel that the summaries suggest that there may be inconsistencies.
- 3.29 For example, there are summaries with similar comments but different ratings.
A debt review rated competent received the following comments:
- failure to advise on DLA
 - failure to provide comprehensive advice
 - failure to keep in contact with creditors and client
- Another debt review rated below competent received the following comments:
- there was no advice on DLA when it was appropriate
 - there was a failure to continue to work on files despite it still being necessary
 - there was a failure to refer when appropriate
- 3.30 We accept that we cannot draw conclusions from the few summaries we have seen and that any apparent inconsistencies may have more to do with how different reviewers write their reports.
- 3.31 However, we do feel that the possibility of inconsistencies occurring would be reduced by introducing team reviews.
- 3.32 We think that reviewers would benefit from working in small groups from time to time. This would mean that they could experience how other reviewers work and have regular debates about what constitutes good and bad work.

Different categories of law

- 3.33 We feel that there may be inconsistencies between different categories of law. From the summaries we have seen, it seems that it might be easier to get a higher rating in some areas of law than others.
A housing review rated competent contained the comment:
- advisers were all competent and there were no concerns that cases were not progressing properly or that clients were being prejudiced
- In contrast, a welfare benefits review judged to be competent received the following comments:
- there was a lack of clear advice on Housing Benefits and Council Tax benefits overpayments
 - No clear and comprehensive advice was given to clients regarding DLA entitlement.
 - The advisers failed to grasp the fundamental dispute of an incapacity appeal and did not challenge the decision appropriately
- 3.34 In order to safeguard against this apparent inconsistency, we suggest that a panel of reviewers from all areas of law is set up to monitor how ratings are awarded and to ensure there is agreement about the equivalence of ratings in different categories of law.

- 3.35 We suggest that this panel replace IALS as the overall moderator. We suggest this because we are not convinced of the value of moderation done by someone who is not a peer reviewer. We feel that our proposed panel would be more effective as it would contain people with legal expertise and experience of peer reviewing.

Do you agree that the stratification of the crime file sample is appropriate?

Do you agree that the stratification of the family file sample is appropriate?

- 3.36 We do not have any specific comments about the stratification of samples in either of these areas of law.
- 3.37 However, as we have already commented, we think it would be useful to peer review a small sample of the work of all advisers, rather than taking the sample from a whole department.

Are the criteria sufficient to identify all potential conflicts of interest?

- 3.38 We believe that they are.

Are there any additional areas that the Peer Review report should consider in providing a comprehensive commentary of the quality of advice and legal work of a supplier?

- 3.39 As we suggested above, we feel it would be more helpful for each adviser to have feedback relating to each criterion on which the files are judged. We feel that this would make it clearer exactly where they need to improve and how.
- 3.40 We also feel that there is some inconsistency in the way that reviewers write their summary reports in that some are much longer and more detailed than others. Consistency in this area is just as important as in the awarding of ratings. Advisers can learn a lot from peer reviewer feedback and therefore it is only fair that they should receive summaries containing similar levels of detail. We feel that this would be addressed by implementing our earlier suggestion of occasional team reviews.

Complexity of work

- 3.41 When reading the peer review summary reports, we noticed that some suppliers were doing more complex work or were carrying out work of more breadth than others. We think that this should be acknowledged in the peer review reports.
- 3.42 We are not suggesting that a supplier who is doing less complex work to a high standard should be compared unfavourably with a supplier doing more complex work. However, we do feel that reviewers should ensure that their feedback reports recognise when suppliers are carrying out particularly difficult work. Furthermore, this kind of information could be useful when making future decisions about the award of contracts.
- 3.43 Advisers take assessment of the quality of their work seriously and often personally. Recognising that a supplier is doing high level work or a wide range of work may help to boost their morale and is likely to encourage them to accept the legitimacy of the whole peer review report.

General findings of peer review

- 3.44 We support the idea of publishing the general findings of peer review relating to best practice and areas for improvement. We feel this would be very helpful for the whole sector.

Does the process as identified in 6.38 provide an effective and efficient mechanism for confirming the rating of the quality of advice and legal work of a supplier?

- 3.45 We think it is unfair that it is the original peer reviewer who decides what happens after representations are made. We accept that the original reviewer should see the representations and have a chance to respond; however, the representations, the response and the files should then be sent to a third party for a decision about what happens next. The third party should be an experienced reviewer or a review panel of three reviewers.
- 3.46 We also believe that suppliers should have access to the peer reviewer's notes relating to each file and not just the summary report. Given that making representations may lead to a second review which could cost the supplier a considerable amount of money, we feel that the supplier should have access to as much information as possible. It is our opinion that the summary reports do not give sufficient information to make fully-informed decisions about whether or not to make representations.

Do you agree with the preliminary equalities impact assessment?

- 3.47 Yes.

Conclusion

- 3.48 As our comments above indicate, we feel that there is room for further research to be done into the best way of operating a peer review system. We also feel that there are some changes that could be made straightaway that will bring about improvements. However, we are strongly supportive of the scheme and believe that it is the best mechanism for ensuring the quality of contracted work.