Government
Legal Department

Being an Effective Government Lawyer

Your guide to delivering outstanding legal advice

February 2025

Contents

Introduction

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I am delighted to introduce this new edition of Being an Effective Government Lawyer (BEGL). Our shared vision in the Government Legal Department (GLD) is to be an outstanding legal organisation, committed to the highest standards of service and professionalism and a brilliant place to work, where we can all thrive and fulfil our potential. As the government's principal legal advisers, our core Purpose is to help the government govern well, within the rule of law. Our legal capability is at the heart of our Vision and our Purpose.

Our work is unique. It spans advisory, litigation, commercial and employment, with a huge breadth and depth of work across and within each of these divisions. It is often complex, challenging and immensely rewarding.

This guide will help you as you navigate your work, whether that is providing advice on the development and implementation of government policies and decisions, drafting secondary legislation, working with Parliamentary Counsel on primary legislation, representing the government in court, or advising on commercial and employment matters.

BEGL provides practical help for you as you progress in your legal career in GLD. It sets out the standards we set ourselves and enables us to assess the service we provide against those standards.

BEGL covers 5 main themes: getting started, working with clients, working efficiently, delivering outstanding legal advice and working collaboratively. It does not attempt to cover every scenario or working relationship but signposts where more information or help can be found. BEGL will support you as you learn from your own experiences, work and reflection, and learn through others you work with and via the formal Learning Management System (LMS). All of us who are GLD lawyers should be familiar with this guidance and should complete the BEGL training, which can be booked on LMS, within a year of joining GLD.

This guidance takes account of recent developments to the way we work, including hybrid working, and GLD's 2024-2027 Strategy with its 3 central objectives: creating a truly National GLD, ensuring Rewarding Careers for All and building An Environment Fit for the Future. To achieve these strategic goals, it is essential that all our lawyers are equipped with the knowledge, skills and values required to deliver outstanding legal advice to government. BEGL is for all of us – whether new to GLD, or to refresh our knowledge, for example when moving to a new team or returning to work after a break. Enjoy it!

Caroline Croft

Director General, Employment with Economic Recovery and UK Governance, and Chair of GLD's Legal Quality and Innovation Committee

Feedback

Colleagues from across the Government Legal Department have contributed to this guidance, reflecting current needs and best practice. Please send any comments to the Legal Knowledge & Communities Team in the Knowledge & Innovation Division.

If you require any assistance with accessing any of the materials linked, please contact the Legal Knowledge & Communities Team.

1 Getting started

Starting your career as a GLD lawyer top tips:

- work through the Legal Induction materials and ensure that you complete all mandatory legal training within your first 12 months at GLD
- make sure that you are familiar with the Legal Learning Framework and take advantage of the wide range of training opportunities on offer
- connect with colleagues across GLD to learn about the broader context in which we work, for example through a Centre of Excellence
- get to know your K&I colleagues and the advice and support they can offer
- build knowledge management into your working processes and help to build and maintain a culture of knowledge and innovation
- get to know your way around GLD’s knowledge systems and legal resources

Who we are

1.1 We are the government’s principal legal advisers. We provide legal advice on the development, design and implementation of government policies and decisions and represent the government in court. From roads and rivers to health and human rights, our work touches on most aspects of public life.

What we do

1.2 We are one of the largest legal organisations in the country, with over 3,000 staff, including more than 2,000 lawyers and paralegals. Our responsibilities include:

  - advising ministers and policymakers on domestic, public and private law, trade policy, international law and human rights
  - providing litigation services to government departments and public bodies, covering public and private law issues
  - drafting statutory instruments and other subordinate legislation
  - preparing instructions for bills to be drafted by Parliamentary Counsel and advising ministers and policymakers during the passage of bills through Parliament
  - providing legal services to support public inquiries
  - advising the Cabinet Office and His Majesty’s Treasury (Treasury) on

Civil Service-wide employment issues and policies, as well as dealing with individual employment issues, including in the employment tribunal
- supporting complex government procurement transactions and dispute resolution
- collecting, managing and disposing of bona vacantia (ownerless personal and corporate property and other assets) on behalf of the Crown's Nominee

GLD Values, Purpose and Vision

1.3 Central to this guidance are the GLD Values, Purpose and Vision. We aim to be an outstanding legal organisation, committed to the highest standards of service and professionalism. We want to be a brilliant place to work, where we can all thrive and reach our full potential in fulfilling our central purpose of helping the government govern well, within the rule of law. You can find out more about GLD's Values, Purpose and Structure on our intranet, Eagle.

Legal Induction

1.4 The purpose of GLD's Legal Induction is to ensure that every GLD lawyer has the foundational legal skills and knowledge required to be an effective government lawyer. It is part of the GLD Corporate Induction pathway and complements induction activities and legal learning specific to your legal role, team and division/group.

1.5 The Legal Induction provides key learning for Week 1, Month 1 and Year 1 in GLD, with specialised pathways for legal trainees and paralegals.

Government Legal Training Programme

1.6 The Government Legal Training Programme offers a range of legal training delivered in a variety of ways, including e-learning, face to face training and online/hybrid sessions. It includes a Foundational Legal Learning programme, with Core Curriculum modules and a range of legal training including the Introductory Course for Lawyers and the BEGL training, which complements this guide.

1.7 The Legal Learning Framework (LLF) is a series of pathways leading lawyers and colleagues in legal roles through key legal knowledge and legal delivery skills learning opportunities, available to GLD lawyers to support them at all stages of their GLD career.

1.8 The LLF is a tool that will help you understand where to access key learning. With the exception of some learning on the foundation pathway, which is mandatory for all lawyers as part of their induction, the LLF is not intended as a required list of learning and you do not need to complete the pathway in the order suggested. It is intended as a guide for you and your line manager to identify technical legal knowledge and practical skills gaps, and to create meaningful and achievable development plans, appropriate to the stage in your career.

1.9 Continuous learning and development is an important part of your career and GLD has created this framework to help you excel both in your current role and in future positions. We really encourage you to set aside the time to invest in yourself.

1.10 All courses can be booked via LMS.

Building a culture of knowledge

1.11 The core purpose of government lawyers is to help the government govern well, within the rule of law. Sharing legal advice and knowledge, including through effective knowledge management (KM) systems, across the Government Legal Profession (GLP) is key to that goal and to achieve it we need everyone to contribute.

1.12 GLD considers that sharing legal advice and knowledge with legal colleagues across GLD (and where appropriate, the wider GLP) is critical to the work that we do in ensuring that government lawyers can properly advise our client departments and public bodies. Such sharing promotes a common approach to the government's interpretation of the law, avoids duplication and promotes efficiency.

1.13 This collaboration and sharing of legal advice and knowledge in current, emerging and new legal areas enables all government lawyers to benefit from our combined legal knowledge and expertise, thereby improving the quality and efficiency of our work for the government of the day. This furthers the general public interest that government lawyers are as well informed and trained on common legal issues as possible. For more information on how and why we share legal knowledge and advice, including GLD's policy on knowledge sharing and how to maintain privilege, see the LION page on Legal Professional Privilege.

1.14 When setting your objectives, it can be helpful to set yourself a KM objective, both for your personal development and to help to prioritise it alongside your other work.

Legal knowledge and guidance

1.15 Everyone in GLD has access to a range of knowledge systems where you can access legal knowledge and guidance.

1.16 LION is a knowledge-sharing platform for the GLP. It hosts legal guidance on a broad range of legal topics, including information and guidance produced by our Centres of Excellence. This platform is available to lawyers from across the GLP and includes a 'Whitehall Lawyers' area where any sensitive information can be stored and access is limited to GLP and core GLP departments.

1.17 eKM is a GLD platform which facilitates knowledge sharing between GLD departments and allows teams to create their own bespoke knowledge-sharing sites.

1.18 The Judge Over Your Shoulder (JOYS) is essential reading for all civil servants. It provides an overview of the common administrative law issues that you are likely to encounter and provides a good introduction for anyone new to the Civil Service.

1.19 Strong KM is an essential part of being an effective government lawyer. Being a government lawyer requires us to capture and share legal knowledge and to keep it up to date.

1.20 KM should be fully integrated into your ways of working. Before you start a new task, check LION and eKM to see what guidance and examples already exist so that you avoid duplicating work. When you work on a task, ensure that you capture knowledge so that lawyers working on similar issues in the future can benefit from the work you have done. You can capture knowledge in Lead Lawyer Notes and by saving examples of work to eKM.

1.21 Each division has KM Champions who can advise on best practice and support KM in your team. Speak to your line manager to find out who the KM Champions are in your division or visit the Knowledge communities pages on Eagle.

Knowledge & Innovation

1.22 GLD's Knowledge & Innovation (K&I) Division is part of the central Chief Operating Officer (COO) Group and leads on legal learning, knowledge systems, library and subscription services, knowledge development and innovation across GLD. It coordinates GLD's legal knowledge and innovation communities, including Centres of Excellence and KM Champions.

1.23 You can find out more about the K&I Division on Eagle, including how to get in touch.

2 Working with clients

Working with clients top tips:

- we build relationships with our clients and communicate with them clearly and regularly
- we are professional, constructive and approachable
- our advice is clear, accurate, succinct and risk-based, in line with our legal risk guidance
- we understand our clients' business
- we take responsibility for keeping clients informed of progress of work, deliver to agreed timetables and when we can't, we tell them as soon as possible
- we ensure that clients are aware of resources such as gld.digital, JOYS and client legal awareness training, and we actively promote training and other resources to support our clients
- we look up and out to understand who does what across GLD and how our role relates to theirs, and we explore opportunities to collaborate to improve client service delivery
- we build relationships across GLD and share and make use of best practice and knowledge, enabling us to work collaboratively to provide legal services to our clients
- we promote a culture of continuous improvement and conduct lessons learned routinely
- we ensure value for money when providing our services

Client care

2.1 We all have a shared responsibility for client care, whatever our role. We pride ourselves on understanding our clients' priorities and use that understanding to anticipate their needs, help them find legal solutions to policy objectives and to achieve commercial and litigation outcomes that are consistent with those objectives. The GLD Client Care Principles set out the basis on which we interact with our clients.

2.2 For around 30 of our most significant clients, we have a formal structure of relationship managers. Client relationship managers rely on the support and co-operation of everyone working with our clients in GLD and across the wider GLP. All GLD lawyers should be familiar with the Working with Clients pages on Eagle.

Resources for clients

2.3 gld.digital is a legal information website for our clients. By providing information on common topics, we can help upskill clients and reduce the number of frequently asked questions, allowing us to work efficiently and conserve our resources to deal with novel or more complex matters. Topics on gld.digital include ‘Law in government’, ‘Making good decisions’, ‘Changing the law’ and ‘Working with lawyers’. There is also more specific information on areas such as procurement, employment and government property law issues. The site is managed by the Knowledge Systems Team in the K&I Division.

2.4 JOYS is a guide for civil servants that clients can use to help navigate the legal frameworks within which public bodies, particularly government, make decisions. Like gld.digital, JOYS is a tool that clients can use to understand the context in which government lawyers work.

2.5 It is important to remind clients that gld.digital and JOYS are not intended to be a substitute for legal advice but provide useful guidance on common and routine questions. They can help avoid clients requesting unnecessary legal advice on straightforward questions and are tools to help clients become familiar with common legal concepts and principles.

Who is your client?

2.6 While our ultimate client is the government, on a day-to-day basis you will generally be working with other civil servants, or ‘officials’, who all share our goal of supporting the government to achieve its aims. You may also be asked to advise operational and other professional teams (for example client HR, procurement or corporate services teams) who support the relevant department. Whoever you are asked to advise, the overall objectives you are working towards are those of the relevant minister, when advising a ministerial department, or of the CEO or equivalent in non-departmental public bodies.

2.7 While you might hear the officials and departmental representatives who you work with referred to as “the client”, these are in fact fellow officials who are also, like lawyers, working to deliver ministers’ wishes. For the purposes of this section of the guidance, references to your “client” refer to the officials you work with on a day-to-day basis in order to achieve the goals of your ultimate client, the government.

2.8 It is essential to understand the wider political context and objectives related to your work, including knowing what the minister wants to achieve and what the broader policy objectives are. Your advice should not be given in a vacuum, but should take account of the wider context and objectives. Similarly, if an issue is likely to have implications across different government departments, it is essential to work collaboratively and engage other departments; remember – the ultimate client is the government as a whole and so our work must consider how issues have an impact beyond the work of our own team or department.

2.9 In practical terms, understanding the wider context is important because:

- you will need to identify whether your policy colleagues have asked the right legal question. For example, you may be asked: “Can we make regulations under the Act to do X?” However, there may be better ways to achieve the same policy objective. The right question here would be: “How can we best achieve the objective, which is X?”. You will not know this if you have not understood the wider context and the policy objective
- sometimes how a key stakeholder responds to a policy proposal may be highly relevant as to whether the policy can be successfully delivered and the risk of legal challenge. Understanding the key stakeholders can help you to advise fully on the legal risks to a proposal
- sometimes the most obvious legal solution or litigation or commercial strategy will not be acceptable for policy reasons. Where this is the case, you will need to work with your client to find alternative solutions that are more acceptable and meet their objectives (or at least go a long way to doing so). Understanding the context can enable you to discount certain options more quickly and suggest workable alternatives. This will avoid spending unnecessary time on options that are acceptable from a legal perspective but are not viable from a policy perspective. Working closely with your policy colleagues to understand the broader policy landscape is essential

2.10 It is also critical that any litigation strategy takes account of the policy objectives. Early involvement of litigation experts at a formative stage helps achieve this and ensures that policy context and objectives are understood. Policy objectives and the relevant policy context or constraints must be correctly explained to courts and tribunals and so litigation and advisory teams should work closely with each other throughout litigation proceedings to ensure that everyone has a clear understanding of policy objectives.

How to develop an understanding of context

2.11 On a day-to-day basis you may be working with policy officials, operational or other professional colleagues, including other GLD and/or GLP lawyers or HR teams.

2.12 You will be given guidance within your teams about your policy colleagues, who leads on different areas, who is responsible for what workstreams, who to contact and how best to build a relationship.

2.13 Here are some general tips about establishing a good relationship with your client:

- speak to other lawyers who work or have worked with these clients – even if they have moved to another team within GLD – and learn from their experience. This can aid understanding of the client as well as providing background to the development of policies, which may help you advise or develop a litigation strategy
- take time to meet the key client contacts and talk to them about how they work. Ask what their priorities are and what significant challenges they face. Consider whether a short time shadowing them, or co-locating with them, would be beneficial in helping to understand their aims and how best you can help them. Most people are happy to spend some time up front answering your questions and explaining how they work
- meet regularly with your clients and consider attending their team meetings or all-staff events. Where the client has an operational arm, try to spend some time in the field as this can give you an understanding of how policies work on the ground and how operational decisions are made
- engage with relevant policy – read key policy documents, ministerial speeches and any recent consultations. Share ownership of the project or ultimate policy objective with the clients. Ask to be copied in on any regular media updates that the policy team provides or set up your own news alerts so that you are aware of press reporting/social media comment relevant to the policies or litigation that you are working on
- make use of relevant KM documents and guidance, including materials hosted on eKM, which can provide an insight into previous issues encountered and advice given in a particular policy area. Likewise, share and develop new KM products on the issues that you deal with.

This will assist future lawyers joining your team to get to grips with a new policy area and understand the needs of the client and create time savings by not needing to repeat work

- find out who the key stakeholders are and take time to understand their points of view. This will give you a better understanding of the factors that shape policy development and of the legal challenges that may arise
- communicate clearly to your clients that you cannot advise or act in a vacuum and need to know all the background facts – even matters that the clients might not consider directly relevant to what they see as the legal issues might be relevant in informing your advice
- build rapport and trust. Clients are more likely to accept advice if they trust your judgement and know you understand their aims
- build capacity and increase client legal awareness by making sure that your clients are familiar with resources such as JOYS and gld.digital

Quality assurance

2.14 Your division or group will have established methods of working with clients building on best practice within GLD. Ask your managers and colleagues about ways of working in your area and familiarise yourself with them. This could include specific quality standards, or methods and requirements which apply in the Litigation, Employment and Commercial Law Directorates when conducting litigation. These groups are all Lexcel certificated by the Law Society.

2.15 In the context of advisory work, GLD has developed quality criteria for written advice and all GLD advisory lawyers need to ensure that their advice meets these criteria. This helps to maintain consistency of quality across all advisory divisions. The Quality Assurance Review process for advisory work requires line managers to review at least one piece of work each month for anyone they line manage who provides legal advice to clients.

2.16 Written advice should:

- answer the question
- be legally accurate
- be clear and simple
- be the right length
- be tailored to the audience

- address legal risk
- suggest solutions and options to help clients achieve their policy objectives
- take proper account of the bigger picture

Accessibility and inclusion

2.17 Clients need to be clear who their lawyers are and how they can contact them. There will be arrangements within your division or group about who is the relevant legal point of contact. If a client gets this wrong and contacts you when they actually need to speak to someone else, be proactive and take responsibility for making sure they are put in contact with the right individual, including GLD lawyers in other divisions or groups.

2.18 It is your responsibility to ensure that your contact details on Eagle, LION and your client's intranet (if applicable) are kept up to date to ensure clients and colleagues can reach you if needed. Your contact details and working patterns must also be included in your email signature.

2.19 It is important to ensure you are contactable via email and telephone/MS Teams during working hours. This applies whether working in the office or from home. If you are away, busy for a large chunk of the day or on leave, set an out of office message on both your email and phone with an alternative contact who will be available for the time you are away. Ensure that the alternative contact knows that you have nominated them and that they know where to access any relevant material and information, so that the issue can be progressed effectively in your absence.

2.20 Most lawyers and officials now have a hybrid working pattern, spending part of the week working in the office and part of the week working at home. Think carefully about which tasks and meetings might be better suited to office-based or home-based working so that you can make the most effective use of your time. Use technology to your advantage, such as using MS Teams for hybrid and remote meetings, and think about how you will use your time, for example arranging meetings on the days you'll be in the office or using time working from home on tasks that require concentration and no distractions.

2.21 As GLD increases its presence across the country, it is likely that you will work in and with teams that are spread in different geographical locations. It is therefore essential to consider how you will work with and build relationships with clients who are based in different locations. Think about opportunities to strengthen relationships with your client, for example through face-to-face meetings, training opportunities and shadowing.

2.22 Familiarise yourself with any flexible working patterns of clients (such as part-time, term-time, etc.) and any reasonable adjustments they may have in place.

Agree ways of working with your clients

2.23 Your division or group should have a standard protocol or quality policy with regular clients for dealing with requests for legal services but you may need to agree deadlines for specific work. Working to agreed timeframes not only ensures that we meet our objectives but also helps build trust and confidence in our relationship with clients.

2.24 Acknowledge requests for advice or instructions promptly and confirm whether you can meet the requested deadline. Do not agree a deadline you know you cannot meet. If you need to agree a new deadline on a piece of policy advice, it helps to understand from your client the place your advice has in the wider timetable of the project. If you realise subsequently that you will not be able to meet the deadline, let your client know as soon as possible. Communication is key, so don’t leave it until the last minute to tell your client that advice won’t be ready by an agreed deadline.

2.25 On larger projects it can be helpful to break work into smaller chunks and set incremental deadlines. This will allow you and your client to monitor progress and to continually assess what is required. For long projects it’s a good idea to have regular check-ins with your client to discuss the work and see if any new issues have arisen that you need to deal with.

2.26 Agree with your clients some specific working methods for commenting on commercial documents, policy papers and submissions to ensure efficiency. For example, where a business case or consultation paper is going through many drafts, ensure that the legal comments are made at the correct stage of a paper’s development and that enough time is allowed for thorough legal checks. As far as possible avoid commenting on multiple drafts of the same document.

2.27 Check how clients would like your comments. Would they prefer substantive amendments in tracked changes or separate comments? Leave style to your clients, so long as it is not legally misleading, but ensure readability and carry out an overall sense check where possible.

2.28 Maximise your use of technology and consider any resources which may be available to you to support collaborative working such as SharePoint, Teams or e-disclosure platforms, depending upon the nature of the work. You will need to consider any risks of working on shared documents, for example will your legal advice still apply if other elements of the document shift and how will you store versions of the document you have advised upon.

2.29 Make sure that you are using technology appropriately – for example, you must not disclose any confidential or sensitive information if using artificial intelligence (AI) applications for your work and you must always follow current GLD policy and wider government guidance.

2.30 When litigation is contemplated, or starts, it is important GLD provides a seamless service. Advisory lawyers should introduce litigators to the clients and help them build their own relationship so that they can progress the litigation. Working together like this, we can avoid duplication, delay and clients' perceptions of anyone acting as a 'post box'. The Roles and Responsibilities in Conducting Litigation page on Eagle has useful tips and a checklist on working together effectively in litigation. When working on litigation, GLD advisory, commercial and litigation lawyers should work together to ensure:

- we speak to the client with one voice, resolving any differences between lawyers away from and not in front of our clients
- we establish a clear understanding of respective roles, ensuring that tasks are carried out by the most appropriate person, taking into account role, skills and workloads. This includes agreeing who is best placed to draft ministerial, parliamentary, media or other briefings relating to the litigation
- we maximise the use of our time to ensure we are delivering value for money. Think about who needs to attend meetings and avoid sending multiple people if one is sufficient
- clients know who to contact. Make sure clients are clear on roles and responsibilities and always have a point of contact, taking into account flexible working patterns and leave
- we make sure that litigators are invited to ministerial or other meetings where the litigation is going to be discussed so that the policy context can inform the litigation strategy
- we work as a team so that litigators are fully informed of the policy and operational objectives, the wider political, stakeholder and media

context and are given access to any previous advice on legal risk. Similarly, ensure that advisory lawyers understand the potential impact of the litigation on policy

Planning future work

2.31 Your director and deputy director will hold regular meetings with clients to plan future work and scan the horizon. Litigation deputy directors and heads of division provide management information on litigation trends and spikes to clients. Where big projects involving significant legal input are planned, it is important to ensure that lawyers are properly involved in the planning stages. Make sure you are aware of the planning which has taken place and be proactive and helpful in your own dealings with clients. You need to work with your clients to ensure their timetables take proper account of the legal work required. For example:

- if secondary legislation is required, they will need to build in time for instructing on statutory instruments (SIs), drafting and working through a number of drafts as the policy develops
- for commercial projects, time for planning and running a procurement will need to be factored in, including drafting or customising the necessary documents
- in complex or large-scale litigation, time and client resources for searching and undertaking large-scale disclosure exercises (which can run to thousands of pages) will need to be factored in
- clients frequently underestimate the time it takes to complete key legal work of any type and so the earlier you can talk them through what is required, the better

2.32 When you are asked to help draw up a timetable for a project which requires legal input, be realistic about how much time the legal stages of the project will take and remember to include time to review and sign-off when required. It is counterproductive to say that things can be done more quickly than they really can because the timetable then ends up being wrong and more time is taken to try and get the project back on track. Check local guidance on timings and check with your litigation or commercial colleagues if you are not sure how long it will take to run a procurement exercise or deal with a challenge through the courts.

Capturing and sharing legal knowledge

2.33 When planning work, remember to check what information and guidance already exist, to avoid duplication of work, and include time for creating and sharing legal information. Capturing knowledge at the end of a project or piece of work is essential and helps us to continually improve our service by ensuring consistency and reflecting on lessons learned. It also helps to save time and to deliver value for money by making sure the next person to work on a similar issue has resources and guidance to refer to. While some legal knowledge might appear to be specific to your team or department or the particular matter, always consider sharing it more widely via eKM and with the relevant Centres of Excellence.

Clarifying requests for advice

2.34 Occasionally requests for advice or clearance of documents come out of the blue, others come from familiar clients whom you work with regularly. Sometimes it may be difficult to make out what the request is about, because it may be unclear or it tells you the question is set out “in the string of attached emails”, or because it simply asks you “if this document is OK.” If you are unsure about the situation or exactly what is being asked of you, ask for more details. Do not fall into the trap of providing very long advice, attempting to answer lots of questions which they might be asking, in an attempt to cover all potential bases. Speak to your client to pinpoint exactly what they need, to avoid unnecessary work.

2.35 Think carefully about the best way to clarify the request. Emailing may well be right if you need a number of items of information or a very precise response to a complicated question, but talking to your clients – on the phone/MS Teams or in face-to-face meetings – is often best and helps to strengthen your working relationship and rapport.

Pitch your advice appropriately

2.36 Think about what the client needs to progress the matter at the particular stage at which you are being asked to advise. If it is sufficient to give a quick steer, so that they avoid legal pitfalls, then do so and ensure you come back to give a more fully considered advice later.

2.37 Tailor your level of service to the circumstances. Often it is not necessary or helpful to spend a long time drawing up detailed advice when clients are outlining initial options or working at a very fast pace. The best way to make sure you are giving them what they need is to talk to them. Pick up the phone and find out what stage they are at, how quickly they need an answer and how conclusive and in depth they want your advice to be.

2.38 Of course, you still need to ensure accuracy even if you are working at speed. In most situations it is possible to come to at least a provisional view even in a limited time. Sometimes you can best do this by checking with other lawyers; for example, people in your team, your line manager or experts in other parts of GLD. If the time pressure is so great that you have to give an answer before you are happy that you have checked it properly then say so – explain that this is your initial view in the time available and you will check that it is correct and come back to them if you have anything more to add. If you feel the position is so unclear/complex that it would be dangerous to give any advice, speak to your line manager or another senior lawyer before going back to the client.

2.39 Be aware of, and sensitive to, time pressures on ministers and officials. They may well have little time to digest your advice and act upon it. Write clearly and succinctly.

2.40 Equally, be conscious of the cost of your time to the client when researching and providing your legal advice. The art is in finding the way to do enough to ensure the advice is succinct and fit for purpose but no more. The clients generally do not need to know the finer points of legal detail and are unlikely to want lengthy advice quoting case law.

2.41 It is essential that you take into account the bigger picture. Make sure your advice reflects and is sensitive to the wider context, including political, reputational and media pressures. Speak to your client, who will know more about the wider context.

2.42 It is important to gauge the level at which to pitch our advice. Many of our clients are legally literate and very experienced and will know more about their business area than you do. Professional respect goes both ways and care should be taken not to patronise clients. We all have our different strengths and areas of expertise. Do not feel threatened if they question or challenge your legal advice – indeed this is a common part of the process and to be welcomed. Consider their points and address them.

2.43 If your clients are less familiar with working in government and legal concepts, then start from the basics. It is important that they understand and follow your reasoning, particularly where ministers are going to probe why the policy delivery is changing as a result of the legal advice. Having a good policy client test your legal analysis can often mean that you get to a better outcome and together you can think of new arguments that you would not have come up with alone. Remember to use your understanding of the policy context and objectives to test the assumptions behind the questions you are being asked. You can also support your clients in getting up to speed with the relevant legal issues by signposting them to gld.digital and JOYS and by using the client legal awareness materials available on Eagle.

2.44 If litigation is contemplated or in prospect, advisory lawyers should help clients contact the relevant litigation team as early as possible and introduce them. If you do not know who to contact, then use the GLD organogram on Eagle setting out the deputy directors of the litigation teams or colleagues for help. Ensure your clients seek advice on the prognosis, prospective costs of litigation, timescale and requirements for the preparation of any evidence, as well as the retention of documentation.

2.45 Litigators should ensure at the outset that clients understand their disclosure obligations and the need to preserve key documents, and take actions to mitigate the possibility of inadvertent disclosures. They should also discuss and agree the litigation timetable with clients and keep it updated to ensure that clients know, in good time, about procedural and court or tribunal deadlines, including any directions.

Meetings

2.46 Meetings, including those with counsel, can be an effective way to understand your client's objectives – saving you time later – and to deliver valuable, timely advice. But they can also consume precious time for little benefit. Think about which meetings you need to go to, whether another lawyer (for example a litigator) may be better placed to attend and whether it is necessary to have more than one lawyer in attendance. It will usually suffice for one legal representative to attend and report back to the rest of the team so think carefully about who will attend what meetings. When you think it is a bad use of your time, suggest that you should drop out or only attend part of the meeting. Similarly consider when a conference with counsel would be useful and whether it needs to be face-to-face. If litigation is being discussed with counsel, ensure that this is agreed first between advisory and litigation teams. Every lawyer is a valuable resource and our time needs to be used wisely –

sitting in while issues not relevant to your role are discussed is not a good use of your time.

2.47 You obviously need to handle this diplomatically and explain to your clients why you think that your time would be better used doing other work. Be willing to listen to them and if they have good reasons for wanting you there you may need to change your mind. However, if the meeting is, for example, largely about delivery of a programme and no legal advice is required, then they can keep you up to speed with a quick phone call afterwards and it is not really necessary for you to be there.

2.48 Sometimes clients like to have their lawyers in meetings with stakeholders but do make sure they have thought this through. It is worth pointing out to them that it is not in their interest for you to give off-the-cuff legal advice in front of stakeholders. Of course, it can be useful to have a lawyer there to state a government legal position which has been properly thought through. However, taking a lawyer to some types of meeting can change its tone and lead to a more confrontational style, particularly if the other attendees also decide to bring their lawyers. This may be what your client wants but if not, perhaps they need to rethink the decision to take you along.

2.49 Look to build client capability but not to do their job for them. Your prime focus when commenting on documents your clients have drafted is to check that they are legally accurate. It is not your job to correct the grammar or improve the style of their writing. If you think that part of their document is hard to understand or states the position incorrectly, then do say so, but you do not need to redraft it for them unless it is the legal aspects of the document which are unclear. If you think the standard of writing is poor, a good approach is to make it clear in the covering email that you have only corrected and commented on the legal aspects of the document as you assume that they will be proof-reading it and correcting grammar, spelling, etc, before it goes out.

2.50 Litigators will need to guide and support clients when preparing witness statements, as clients are responsible for the accuracy of the content. It is important to ensure that clients understand that they are providing formal evidence and are therefore subject to the rules of court. It is essential that clients are personally satisfied that the content of their statement is true as to matters of fact and implication. You will find information in ‘General points about witnesses’ on gld.digital, which outlines the responsibilities and duties of the client as a witness.

2.51 Give constructive feedback to clients and think carefully about how to give it. It is OK to point out where you think clients are getting things wrong but think about how to best deliver feedback and discuss with your manager.

2.52 When your client is new to their role and you are more experienced in the relevant area, try to help them get up to speed quickly, for example by offering teach-ins. Do not feel that you cannot make suggestions on policy matters but remember that ultimately the decision is for clients and ministers. As always, ensure that ministers and senior clients are correctly informed about relevant legal risks connected with a policy, case, or other key piece of work and be ready to offer solutions or alternative ways of delivering their policy goals.

2.53 Sometimes clients will benefit from guidance notes, brief newsletters or short training sessions to deal with common questions, or to build capability in a way that will reduce the need for legal input. These are really good ideas but look to see what already exists on platforms such as gld.digital and in the client legal awareness library. Speak to your line manager or the Knowledge Systems Team if you think this is an area which should be covered on gld.digital but is not.

3 Working efficiently

Working efficiently top tips:

- always make use of shared knowledge and expertise, including LION, the Centres of Excellence, eKM and gld.digital
- build knowledge management (KM) into your everyday working practices in order to streamline process and maximise efficiency
- think creatively about how processes can be adapted or streamlined to maximise value for money and avoid duplication of work
- ensure that commercial services deliver the best possible value for money for clients
- understand the charging model that applies to your division and complete timesheets
- always monitor the legal costs liability of your client when working on litigation matters
- ensure your client is aware of the costs implications of the advice they request, including obtaining advice from external counsel and engaging other divisions within GLD
- work smarter – think about who needs to be in attendance at meetings and conferences and allocate tasks efficiently within your team

Getting the most out of our resources

3.1 As lawyers in government, we are a valuable resource and a cost. This guidance stresses the importance of delivering a high quality service as efficiently as possible by:

- using the full range of available knowledge and learning resources (LION, eKM and gld.digital, Centres of Excellence, library and subscription services, and learning and development opportunities)
- giving advice which is clear and fit for purpose
- providing litigation services which are proactive and cost-efficient
- procuring commercial services that represent value for money
- making best use of shared knowledge and the expertise of colleagues, and working efficiently together as GLD without unnecessary duplication of roles and responsibilities, and engaging in our own learning and development

3.2 As civil servants we are bound by the core values of integrity, honesty, objectivity and impartiality as set out in the Civil Service Code and have obligations to ensure public money and other resources are used properly and efficiently. Every lawyer in GLD needs to think proactively about how we can help reduce the overall cost of legal services for our clients and for government as a whole.

3.3 Lawyers are required to record their time. How this is done will depend on which division you are based in:

- in advisory divisions, teams complete the Time Recording System on time and with care, allocating the right time to the right matters
- in litigation and other teams charging on an hourly basis, ensure all time is accurately recorded on the Case Management System, all the time thinking innovatively about how time recording systems could be improved and what other information would help clients use our services efficiently. Access Guidance on time recording on CMS

Understanding the charging model

3.4 During your induction you will be given information about GLD's charging models across all divisions and groups. It varies between the Litigation Directorate, advisory divisions, the SI Hub and the Employment and Commercial Law Directorates. It is important to have a basic understanding about how legal services are funded in government so that you can help reduce costs and maximise value for money.

Litigation Directorate

3.5 The Litigation Directorate records billable hours on each case. All costs are recovered from the clients and automated invoices using hourly rates for each grade of fee-earner are produced on a monthly basis and sent to the client department. Some advisory divisions check and/or endorse GLD Litigation Directorate invoices for their clients and some advisory directors hold the budget for litigation on behalf of the client department.

3.6 When instructing counsel, you should consider whether junior counsel or a KC is appropriate, taking into account the level of expertise required and the need to ensure value for money. There are 9 panels of counsel approved to undertake government legal work. The default position is that you should use

Panel Counsel; off-Panel Counsel should only be considered as an exception. The Counsel Guidance Note provides information on topics such as using Attorney General's Counsel and First Treasury Counsel, seeking nominations for off-Panel Counsel, counsel's fees and monitoring the performance of Panel Counsel.

3.7 If you do not instruct Panel Counsel and instead opt for off-Panel Counsel or King's Counsel (with the exception of First Treasury Counsel), then approval in advance is required by way of a nomination from the Attorney General. For more information, see Panel Counsel and External Legal Services on LION and Panel Counsel on Eagle.

3.8 It is important to note that where the Litigation Directorate seeks to recover costs from the other side in litigation, the hourly rates claimed at court are different to those which are charged to our clients. Guidance in relation to costs orders and what can be recovered from the other side is available through the Litigation Costs Centre of Excellence on LION.

Strategic costs management in litigation

3.9 When you have conduct of litigation, always consider the legal costs liability of the client and how to control costs when agreeing an overarching strategy for conduct of the case. Can an early decision on liability be made; should an early settlement offer be made? Help is available from your colleagues and from GLD's Costs Team in Litigation Directorate.

3.10 In particular, think about:

- funding: how is the claimant funded and what impact might this have for the strategy and conduct of the litigation? If a claimant is legally aided, the position is that costs will not ordinarily be recoverable against an unsuccessful legally aided party. However, in certain circumstances you can consider seeking an order recovering costs from the Lord Chancellor (via the Legal Aid Agency). Does qualified one-way costs shifting (QOCS) apply to your case? QOCS acts as a bar on the recovery of costs in certain personal injury and fatal accident cases and provides that the defendant may not recover the costs of the claim even if successful. There are some limited exceptions to QOCS (for example, failure to beat a Part 36 offer, fundamental dishonesty on the part of the claimant, or strike out of claimant's claim), which you should factor into your thinking on case strategy

- budgeting: think carefully about cost budgeting and keep it under review. The budgeting process requires parties to estimate the forward costs of their case and the court will then fix those costs. Budgets should be planned well in advance and you should seek early assistance from the GLD Costs Team to draft them. Always consider whether a development in the litigation warrants a budget revision. Failure to seek a budget revision can impact adversely on costs recovery on behalf of our clients
- conduct: generally, always bear in mind the conduct of the parties and their lawyers in relation to costs. Equally, your conduct and the way you work, and client conduct, can escalate costs, so give early advice on this and ensure you work as efficiently as possible. For example, if it takes a client a long time to locate documents for disclosure, costs will increase
- recovery: remember that costs may ultimately be recoverable from the opposing party. This means that time spent on the litigation file must be clearly described and accurately follow GLD's time recording guidance. Our costs specialist team in Litigation Directorate may have to put together bills of costs based on your time entries, so they must be clear and justifiable. Most importantly of all, time entries must always be recorded against the correct time phase of the litigation, as well as the task and activity. Failure to do so may result in some costs being disallowed at the budgeting stage or by the court on assessment

Advisory divisions

3.11 Advisory directors negotiate an annual fixed fee for advisory work with the relevant client department. This process usually starts in December and is finalised in March. GLD then invoices the department on a monthly or quarterly basis from April of the new business year.

3.12 The fixed fee is calculated to cover the cost of staffing the advisory division (salaries, pension contributions, training, travel), any agreed external legal resource and a fair share of GLD overheads (finance, HR, comms and other corporate resources). The client department usually provides IT and accommodation, with a suitable financial recharge.

3.13 Staff costs are by far the greatest element in advisory fixed fees. Advisory directors work closely with policy counterparts to calculate how many staff they will need in the coming business year, looking at planned work and projects needing legal support as well as core business activities. If unplanned work arises or is requested, directors will seek to reallocate and reprioritise in agreement with clients. Broadly, we do not seek to renegotiate the fixed fee unless new work exceeds a 10% band.

SI Hub

3.14 The SI Hub is also financed out of the fixed fees paid by client departments. Once the fixed fee is agreed, a small ‘top slice’ is used to create the budget for the hub. The SI Hub’s budget is of a size to employ sufficient lawyers to do approximately 20% of GLD’s SI drafting. In return for this, each advisory division is entitled to receive a proportionate amount of hub drafting resource. This means that, from the client’s perspective, on any individual SI project the hub is free at the point of use.

Employment and Commercial Law Directorates

3.15 GLD lawyers in our Employment Directorate and Commercial Law Directorate do a mix of advisory and litigation work. Their litigation work is charged out using hourly rates (as in Litigation Directorate). Some transactional work and advisory work are also charged in this way.

3.16 Advisory work done by Employment Directorate and Commercial Law Directorate lawyers for our main client departments is usually comprised in the fixed annual fee agreed for advisory work.

Maximising value

3.17 Keeping costs down should be at the forefront of your mind and should shape your day-to-day working practices. It is easy to carry on doing things the same way we have done previously, and your clients will often be very happy with that, but it is important to make sure that we are delivering value as well as quality.

3.18 In most client departments, budgets for legal advice are held and managed by client finance teams. The individuals that you work with day to day often have no visibility of the fee arrangements. This is particularly the case for advisory divisions where working-level clients experience legal advice as a ‘free’ service.

3.19 That puts an even greater onus on advisory lawyers (including commercial, property and employment lawyers when undertaking advisory work) to look to the cost of our service and think how we can reduce it while maintaining or improving quality and outcomes. Lawyers should therefore think innovatively about how to keep costs down and streamline processes. This should include promoting and maintaining the GLD cost-cutting resources, tools and services available such as gld.digital and JOYS, so that clients don't request fresh legal advice if the information they are seeking is already available elsewhere. Lawyers should check what materials are available on eKM before embarking on a new piece of work to avoid duplication.

3.20 Increasingly, client departments want their officials to understand and see the cost of the legal support they are requesting. This changing climate makes accurate time recording vitally important, as it provides core data about the nature and amount of legal work being done across GLD.

3.21 In order to maximise the value of our legal services, you should always consider the following before you start work on any legal advice that your clients request:

- are there any off the shelf resources directly accessible to or designed for clients? Direct the client to pre-existing legal information on gld.digital, JOYS or share your own division or group's or GLD's library of client legal awareness materials
- use existing shared legal resources, including drawing on the knowledge and experience of colleagues in Centres of Excellence for cross-cutting issues. The Legal Resources and Knowledge and Innovation sections on Eagle provide more information on available KM resources
- engage the Knowledge Development Lawyer (KDL) community and KM Champions. A growing number of GLD divisions now have a KDL who can help you find the information you need. You should also work closely with your departmental KDL(s) to make them aware of the types of information you need and the common legal issues you deal with. Each division has a KM Champion whose role it is to coordinate and champion storage and maintenance of legal know-how

3.22 Remember that all lawyers are responsible for contributing to the creation and maintenance of legal know-how. Consider how this can be built into your work, and how know-how can best be captured and kept current. It can be helpful to set your own KM objective, both for your personal development and to help to prioritise it as an integral and essential part of your work.

3.23 Next time round: if there were no off-the-shelf materials or relevant legal awareness/KM materials, do you need to create some? Speak to your managers, KM Champions and Centres of Excellence about these points or contact the Knowledge & Innovation Division for advice on this.

3.24 Right person, right task: allocate tasks effectively to the right level within your team. Consider whether it would be more efficient for another team member to do the task with appropriate guidance, training and supervision. In litigation, paralegals, apprentices and case-working administrative colleagues may be a more appropriate and efficient choice for a task than legal colleagues. Other times it will be more appropriate to use external resources e.g. 'junior juniors' or Legal Services Panel firms. Ultimately, consider who is best placed to answer the question or perform the task.

3.25 Advisory and litigation: when litigation and advisory colleagues are working together on litigation cases, make sure the right lawyer is doing the right task and make the most effective use of counsel.

Innovation

3.26 GLD strives to incorporate innovation into everything we do. 'Innovation' refers to anything that is both new and useful; while it might include the ways in which we use technology to collaborate, it also encompasses other processes and ways of working. We need all of you to help us think innovatively about how we can continue to deliver excellent legal work in different and less costly ways and share this information widely so that everyone across GLD can benefit.

3.27 Question the way you work and the way you see others working. Pay attention to new approaches being tested in GLD and in the wider legal profession and volunteer to take part in these. Raise your ideas within team and divisional meetings and with the Innovation Network through your division or group Innovation Champion. Ideas don't need to be complicated or technical and might include ways of streamlining processes, triaging requests for advice, working collaboratively, or ways to maintain and share legal know-how. The more legal staff volunteer for projects, pilots, trials and user research, and feed in their views, the greater our chances of successfully introducing new tools and solutions that we all see the benefit of using. GLD's culture is that people in all roles should feel supported to share and discuss ideas and to try something new. We know it will not always work, but that's OK.

3.28 Think about the contribution you can make to legal knowledge across GLD, including creating new content, as well as ensuring that existing knowledge is maintained and kept up-to-date, for example sharing legal knowledge on eKM, joining a Centre of Excellence, or becoming an KM or Innovation Champion.

4 Delivering outstanding legal advice

Legal advice top tips:

- attend Legal Risk training
- agree with your client exactly what is required: do you need to draft formal advice or can you send your advice in an email?
- do you need to have a meeting with your clients to deliver the advice? When delivering complex or difficult advice, it can be helpful to follow up with a face-to-face meeting to discuss options and next steps face to face. If the advice is straightforward, an email is probably sufficient
- if your written advice is longer than one page of A4, present it in a separate Word document
- keep accurate records of substantive discussions with clients. Consider whether it would be helpful to summarise the contents of a meeting or call in a follow up email to ensure clarity and avoid any misunderstandings of what is required
- don't make written advice longer than it needs to be
- avoid legal jargon – always use clear language and plain English
- follow the GLD house style for legal advice (see below) to ensure consistency
- include headings and numbered paragraphs so that your advice is easy for your client to navigate

Your advice

4.1 The advice you give should be clear and concise, identifying key issues and offering constructive solutions to legal problems. It should follow the Attorney General's Guidance on Legal Risk.

4.2 It can be helpful to look at previous examples of advice to get an idea of the structure and level of detail required. Ask lawyers within your team and KM Champions for some good examples to look at and consider developing templates where appropriate to streamline the provision of advice.

4.3 Remember that there is no 'one size fits all' approach to providing legal advice and it is important to consider carefully what is most helpful and appropriate in the particular context in which you are being asked to advise or act.

4.4 This section of the guidance sets out some factors to bear in mind in relation to the form and content of your advice.

The form of your advice

4.5 You should think carefully about the form of your advice. How your advice is received depends not just on what the advice says but on how you say it. Think about the right form for your advice before you advise. Should you give your advice in an email or over the phone, in a formal written advice or in a meeting, or use a combination of these methods?

4.6 Here are some factors to consider when deciding what form to advise in:

- how quickly is the advice required and how much time does the person receiving it have to consider it?
- who is the audience? Think about the level of background information required and what prior knowledge your audience will have then tailor the level of detail in your advice accordingly
- how permanent a record of the advice does there need to be and does the advice apply more widely than the immediate request for advice?
- how technical or complicated is the advice? Is it helpful to include worked examples to help explain complex information?
- is the advice going to cause challenges for the client? If this is the case, you should be able to explain what the challenges are and offer alternatives and/or mitigating steps
- where advice is required quickly, there can be real advantages in meeting your client face to face or speaking on the phone/MS Teams so that you can seek clarification as you advise and they can ask questions as you go. This is obviously much quicker than a lengthy email chain but it may exclude important participants, who would otherwise be able to contribute to an email chain. Always make sure you are involving the right people in any calls/meetings
- where you advise orally, always follow it up with an email (and save that email properly) so that there is a clear record of your advice and less room for misunderstandings to creep in. Also, think about anyone else who needs to be aware of your advice so that the right people are copied in
- use a phone call or a meeting to prepare clients for advice that they are not going to like or that will cause them difficulties – they will appreciate being warned rather than to have such advice arriving cold. If you are

concerned that clients may not grasp the potentially serious consequences of a piece of advice that you are giving and you want to really emphasise a particular point to them, then a meeting or phone call may also be a good idea. Again, consider whether following up in an email is required to make sure there is a clear summary of your advice

- you may be asked to provide advice by commenting on a submission (a document setting out formal advice to a minister or request from a civil servant for approval or authorisation). In an ideal world we would not be advising in this way but sometimes speed requires it so think carefully about how to do it:
    - do you need to send separate legal advice and signpost it in your submission comments? A separate advice document (or email) can be helpful if you need to convey a lot of information to your clients and it provides a record of your advice. Simply commenting on a submission means that your advice may be lost when the submission is finalised
    - do you need to delay the submission in order to give proper legal advice? Sometimes this is necessary, particularly if the submission proceeds on a false assumption about the legal position, and the sooner you can go back to clients and tell them this, the better. Sometimes the submission cannot be delayed; if so, then make sure that legal advice is included and, where necessary, clearly caveated as being provisional and say when full advice will be provided

4.7 Here are some other points in relation to the form of written advice:

- do not make your advice any longer than it needs to be. You want your client to read and understand your advice and the longer it is the more likely they are to miss bits out and to rely solely on the summary
- do not lose sight of the purpose of the advice – it is being prepared to help the client achieve a policy or operational aim; it is not an end in itself. Make sure that all relevant questions are addressed clearly and don’t include information that is not relevant
- avoid using footnotes in advice unless you really have to – they break the flow for the reader and can easily become overly academic
- use direct language, avoid legal jargon and unexplained acronyms. Try not to slip into writing in clichés, whether from the legal world or from the long list of Civil Service phrases (e.g. going forward, granularity, deep dive – we all have our pet hates!)

- if it is important for your clients to have the detailed background and your analysis of the relevant legislation and case law, consider setting it out in an annex rather than the main body of your advice. If such an analysis is required, remember to consider whether it can be saved and shared as a KM product. Speak to your KM Champion and the relevant Centre of Excellence to find out how you can share knowledge products
- make sure that you have considered the ‘Checklist of common legal/litigation issues’ (see Annex 1)
- think about what level of government security classification your document should have and follow the appropriate handling guidance. The Guidance on Government Security Classifications is available from the Cabinet Office and you should follow the GLD Guide to Handling Protectively Marked Material on Eagle
- in a piece of formal written advice you should include in a header a reminder that the contents are legally privileged and should not be disclosed without agreement, for example: “Confidential and privileged: the contents of this advice and any attachments should not be shared without agreement.”
- the fact that advice is legally privileged should not be a barrier to sharing advice internally for the purpose of knowledge sharing. Please refer to LION for more information on privilege and sharing legal knowledge and advice
- as legal advice is often shared by email, it is good practice to include a notice in your email signature to state that the contents may be subject to legal privilege. For example: “This email and any files transmitted with it are confidential and may be legally privileged. If you are not the intended recipient, you are notified that any review, dissemination or copying of this email and any files is prohibited and that privilege has not been waived. If you have received this email in error, please notify the sender and then delete the email.”
- the most frequent form of giving legal advice for government lawyers is by email. This can make you slip into a less formal style which may not be appropriate to your audience, so always think about who is going to read this advice. It is important to bear in mind that your advice could end up being circulated more widely than the people you are sending it to, so always keep your tone professional and exercise restraint when commenting on events or other people

- where you are concerned about your advice being circulated more widely because it contains sensitive information or data, or because you are concerned legal advice privilege or litigation privilege may be lost, then specify to the client that they should come back and seek your advice before sending it on. If your advice is expressed in a series of exchanges, distil it into a single email or attachment at some stage so that it is coherent and can be found in one place

GLD quality criteria

4.8 All GLD lawyers must ensure their advice meets the Advisory quality criteria. This helps to maintain consistency of quality in legal advice across GLD.

4.9 Written advice should:

- answer the question
- be legally accurate and cover all the necessary legal angles
- be clear and simple (well set out, written in good, plain English, avoiding legal jargon and acronyms)
- be of appropriate length (short and to the point)
- be tailored to the audience (private office/technically aware client etc.)
- address legal risk appropriately (using the language of the Attorney General's Guidance on Legal Risk)
- identify key issues and suggest solutions (including options where appropriate)
- take proper account of the bigger picture (e.g. departmental context, cross-government implications)
- start with a summary of the question posed and the answer provided
- comply with the GLD house style for legal advice (below)

GLD house style for legal advice

4.10 Good presentation makes a real difference to easy comprehension. Our GLD house style for legal advice (see Annex 4) will help to ensure that all advice is equally easy to read and follow – and enable clients more readily to recognise GLD as a single organisation providing a consistent standard of advice.

4.11 Wherever possible, you should use a standard format when setting out advice. This should include, where possible and appropriate, the following headings:

1 Executive Summary
2 Issue
3 Advice and mitigating factors
4 Risk ratings for each of the 3 key elements of risk
5 Conclusion

4.12 Following a consistent format will ensure that all advice is easy to read and follow and covers all relevant information. This will also enable clients more readily to recognise GLD as a single organisation providing a consistent standard of advice.

4.13 Your advice needs to be easy to read and digest. Keep your advice targeted and to the point and be concise wherever possible. If your advice is going to be longer than one side of A4, then it is better to put the advice in a separate Word attachment rather than sending it in an email. When sending advice in a separate attachment, you should also include a brief summary of the advice in the body of the email. Equally, if you know that the advice you are giving needs some permanence and weight then that is another reason to put it into a separate document rather than include it as part of a more ephemeral email chain.

4.14 The format of written advice should:

- number the paragraphs and pages
- use Arial font, preferably size 12
- use short paragraphs with spacing between any bullet points
- use headings and bold as appropriate to guide the reader
- be as concise as possible

Content of advice

4.15 Your client has come to you for advice on how to make progress on a particular issue. Your advice will need to address the key legal issues and provide practical solutions. There are no fixed rules about what to include in your advice but the following principles and tips can help.

4.16 What is the question?

- think about the questions you have been asked and make sure you have addressed them. If it makes your advice clearer and there is enough time, set out the question(s) in the advice

- however, remember that the clients may not always know the right legal questions to ask; sometimes you may need to explain why the relevant questions are not exactly the same as the ones your client asked you. If there is any uncertainty around the question(s) posed by your client, you should always discuss this with them before drafting your advice to make sure you fully understand the request

4.17 How much analysis?

- think carefully about how much legal analysis and risk analysis the client needs to see in order to back up the answer. Context is very important here. If you are advising at speed and urgent decisions need to be taken, keep it as short as you can. Think about the person who is receiving the advice – some clients are expert in the area that you are advising them in and will appreciate seeing fuller reasons for your advice. Other clients just want to know how to reach a solution without a full explanation of the detailed legal position. So, tailor your advice to your audience
- if you are giving advice to which the client is likely to be resistant, then you will need to provide more analysis to back it up. If your answer is basically "No" then you will need to expand on why there are legal barriers to what the clients want to do and also provide other, lawful ways of getting to the desired outcome
- if in doubt, you can usually assume that clients want shorter advice rather than longer and you can always offer to elaborate further if needed. If you need to keep a record which shows your reasoning, then do so and remember to save it to the eKM system and share appropriately
- you do not necessarily need to recite the facts in order to explain how you reached your answer but sometimes it may assist to illustrate the argument that you are making or to show that you have understood the context

4.18 Is the law clear?

- where the law is clear on a particular question then give a clear answer. There is no need to go into why, in other circumstances, the answer would have been different
- bear in mind that your advice on the legal aspects of an issue will not be the only factor that clients or ministers have to weigh up when making a decision. Your advice is there to help them assess the risks and

consequences of a decision and they may not want to follow the least legally risky path. Often we are being asked to construct arguments and assess whether there are any tenable arguments to support a course of action that the minister wants to take and that is a key part of our role

- ministers will need to consider legal risk when taking decisions. Your advice should clearly lay out the risks and implications of proposed courses of action, in accordance with the Attorney General's Guidance on Legal Risk, as well as setting out any possible mitigating steps and/or alternative ways of achieving the desired policy outcome
- if the answer to a particular legal point does not affect your advice on the way forward then there is no need to go into it, unless you really need to explain to your client why it does not matter in this situation
- where the law really is unclear you will need to include more analysis to explain how you have reached your view. It may be that there is no clear answer because there is contradictory case law on a point or there may not be much applicable law because it is an area that is rather special to government and so you have to proceed by analogy from a related area
- you still need to come to a conclusion in your advice – it does not help your client to give advice that says "on the one hand X but on the other hand Y" – but you do not need to hide the fact that your view is tentative or that you have only preferred that view by a small margin. It can be important for the client to understand that there are good arguments both ways on a particular point and also for you to expose your thinking so that it can be tested. You may want to suggest getting counsel's advice in appropriate cases. If you do, make sure you alert your clients to the costs involved

Make your advice as helpful as possible

4.19 Remember you are there to work with your clients to reach a solution and – wherever possible – to find a legal way for them to achieve what they want. So be flexible and creative in your advice. Think about the legal tools at your disposal as a way of solving a problem and achieving a policy rather than as a barrier. Possible solutions depend on the situation you are advising on but here are some suggestions to think about:

- would taking the decision in a different way, e.g. gathering more evidence or delaying consultation, reduce or remove the risk of the challenge being brought or being lost?
- can you negotiate a settlement to avoid a matter going to court?
- could officials and ministers use political or diplomatic levers to explain the government's position effectively and avoid criticism and enforcement action at international level?
- are there preparatory steps that government could take (such as having new legislation drafted and ready to bring into force immediately) that would mitigate the impact of a losing judgment?

Are there wider legal issues?

4.20 Make sure relevant issues such as devolution, human rights, commercial, information, trade or international law issues have been considered early. Problems can be avoided if these issues have been identified and dealt with early on. You may wish to engage Centres of Excellence, other government departments or other GLD teams to support you with cross-cutting issues.

4.21 Ensure that you have considered whether the proposals raise any commercial (e.g. procurement), employment (e.g. Transfer of Undertakings (Protection of Employment) regulations, known as TUPE), procedural, financial or other approvals or policy issues and that all relevant GLD colleagues are involved. Also consider whether any central guidance, policies, procedures or approval processes may need to be taken account of. Policy colleagues may not be so alert to these issues and will not necessarily have made the connections.

4.22 Where decisions may impact on other departments, you will need to work collaboratively and alert your legal colleagues advising those departments to the risks. Speak to your line manager about the best way of doing this; as well as contacting the relevant department to discuss the issue with them, there may be central registers or other mechanisms for feeding into cross-government legal working groups or Centres of Excellence.

4.23 Be proactive in your advice: if a new legal issue arises that will impact on your clients, raise it with them. Consider how a matter might progress and issues that might arise in the future and consider whether to flag potential legal issues up front. This can be particularly relevant where a matter is the subject of litigation. For example, clients awaiting a decision in a case must be advised about embargoes and the importance of preparing for them in advance.

Advising on legal risk

4.24 All GLD lawyers should follow the Attorney General's Guidance on Legal Risk (Legal Risk Guidance), including those in litigation and other specialist groups. Further information on the Legal Risk Guidance for GLD lawyers is on LION and information for your clients is on gld.digital.

4.25 The Legal Risk Guidance provides for a consistent methodology in approaching advice on legal risk. External lawyers and counsel should also use this method when providing advice to government on legal risk, so you need to ensure they are aware of it and understand it.

4.26 The Legal Risk Guidance is relevant to all lawyers in GLD giving risk-based advice. For advisory teams it is particularly relevant when advising on policy and operational matters. For litigation teams, the guidance feeds into how the merits of a case are presented in prognosis letters and any other advice which is required. Prognosis letters must conform with GLD's Quality Policy and Procedures and legal risk must be expressed following the Legal Risk Guidance. Always ask to see, and consider, all previous legal risk assessments provided by advisory colleagues, external lawyers or counsel, when being instructed on a case.

4.27 The Legal Risk Guidance requires lawyers to be clear when giving advice about the risk of a legal challenge being successful (assuming one were brought), the risk of a legal challenge being brought, and the impact and consequences of legal risks. When advising on legal risk, you should give a clear explanation of what practical consequences arise from your advice. It is important to take care to explain what solutions or mitigations exist and ensure that your client understands that just because there is some legal risk, that does not necessarily mean that the proposed policy or course of action cannot be taken.

4.28 Remember that your assessment of legal risk can change over time as relevant facts and evidence are explored and arguments are developed, especially if you have been asked to advise early on in the policy development process. Use your judgement to reassess your legal risk advice over time and communicate any changes with your client.

4.29 If you are of the view that no tenable legal argument can be found to justify a proposed decision or policy, you should report this to your line manager so they can consider what steps to take.

4.30 It is essential to ensure the impact of the risk is recorded in every case. This is a fundamental part of the risk assessment and should be included in your advice.

4.31 When providing written legal advice, the risk ratings and impact should be highlighted in bold in the text and also highlighted in the Executive Summary of your advice so that it stands out clearly to the reader (without them necessarily having to read all of the detail first). Where you are providing advice in an email it is helpful to highlight the risk ratings at the beginning of your email.

4.32 When advising on risk, you should answer 3 key questions:

- what is the likelihood of a legal challenge being successful (assuming one were brought)?
- what is the likelihood of a legal challenge being brought?
- what are the impact and consequences of the legal risk?

Likelihood of a legal challenge being successful (assuming one were brought)

4.33 The assessment of likelihood of success will require you to analyse and weigh the robustness of the legal arguments on both sides, including procedural issues such as whether the other party has standing. This is for lawyers to assess, with policy input in relation to the rationale of the policy/action and the available evidence. The level of certainty in the relevant law, the novelty of our arguments or a policy desire to challenge existing case law are all relevant factors for you to consider in your advice.

Likelihood of a legal challenge being brought

4.34 Policy or operational colleagues are likely to be in a better position than lawyers to assess who, if anyone, might want to make a challenge and the likelihood of this occurring. The forum and timeframe of such a challenge, as well as the possibility of interim relief, should all be considered.

Impact and consequences of legal risk

4.35 Ministers need to be informed of all the potential impacts of a legal challenge, some of which are relevant even when a challenge is not successful (such as resourcing implications). You will need to work closely with policy colleagues when assessing impacts. Examples include:

- financial penalties
- reputational damage
- delay in delivering the policy
- quashing of decisions that have to be retaken
- quashing of secondary legislation
- contracts being set aside
- contractual damages
- regulatory confusion and enforcement gaps
- criticism by the ombudsman
- resource implications

4.36 The Legal Risk Guidance provides for a consistent use of language in describing legal risk. This is important so that ministers and policy colleagues get a clear and accurate picture of the legal risks involved.

4.37 It is mandatory to complete the "An Introduction to using the Attorney General's Guidance on Legal Risk in GLD" training within the first month of starting your role at GLD and the live "Legal Risk" training session within 3 months of starting your role at GLD.

4.38 It is important to remember that our role as government lawyers is to help ministers and other clients achieve their policy objectives. We give a professional, frank assessment of the legal risks, where they exist, both domestically and internationally. Where legal risks exist, we give constructive and creative advice on how to avoid or mitigate the risks and identify less risky solutions. It is ultimately for ministers to take decisions, taking into account not only the legal risks but all the other pros and cons (political, financial, reputational and so on).

4.39 Context matters when advising on legal risk. It is not always the case that the worst that could happen is losing a significant judicial review challenge in court. For some policies, having a challenge raised at all might be disastrous because it will delay progress on a programme and divert resources. In other policy areas it may be that ministers would prefer to test the arguments before the courts even if there is a high risk that the arguments may not succeed.

4.40 The appetite for risk is different in different scenarios, not just from department to department. It is important that the government should receive full merits legal advice, wherever practicable, which assesses the strength of the legal arguments for and against the lawfulness of the policy or decision, not just advice focused on whether a tenable legal argument is available. Sometimes the judgement call which minsters need to make is not “Does government have a tenable legal argument to support this decision?” but “Can we show that we have done everything possible to, for example, respect human rights/protect public money in this situation?”

4.41 You should look at the problem from many different angles. Think about how the proposed course of action appears from the perspective of people affected by the decision and how stakeholders are likely to react. Put yourself in the minister’s shoes: what are their priorities, how will this advice land with them and what do they need to know from you?

4.42 Think about how the situation may progress along different tracks and talk your advice through with policy colleagues. Where you can, try to help colleagues to think several steps ahead to anticipate how future risks might develop.

4.43 Be open-minded and willing to listen to the points your client makes. If they are challenging your advice, do not be defensive: work with them to see whether the arguments that they are making could work to reach the position that they want. It is important that ministers and officials feel free to probe and challenge their legal advice if they do not understand it or think it misses something. The mere existence of ‘legal issues’ – without understanding the nature and extent of them and exploring the scope for mitigating them – should not be used as an excuse for risk-averse decisions.

4.44 Remember, though, that the policy or proposed course of action needs to be developed to a certain level of detail to enable a sensible risk assessment to be given. If you are asked to advise on an issue where the policy or proposed course of action is still at a very formative, high-level stage, it will usually not be appropriate to give a full risk assessment. You will need to let your policy colleagues know that you do not yet have enough detail to enable you to advise fully on the legal risks, but you should be able to give some clear steers as to the likely areas of concern and advise on issues to think further about.

5 Working collaboratively

Working collaboratively top tips:

- tap into the communities of expertise across GLD when working on cross-cutting issues. Contact the relevant Centre of Excellence to find out what support they can provide and make use of practice notes and legal know-how on LION and eKM
- ensure that all relevant colleagues are aware of any significant, complex or novel issues you are working on. This could include colleagues both within and outside your team/division, as well as across the wider GLP community (for example, the Law Officers’ Departments)
- share information and legal knowledge with legal colleagues who might benefit or be able to share more widely through Centres of Excellence and knowledge management networks.
- consider how you will work effectively with colleagues in different geographical locations, making use of technology to connect with colleagues across all GLD’s offices
- pay attention to working patterns and ensure that important meetings and calls are arranged for times when colleagues with different working patterns are available
- make sure your colleagues know your working pattern by including it in your email signature and always add an out of office message if you will be unavailable or on leave

Working as a team

5.1 It is important to remember that when providing legal support to our clients we work as part of a team, not as ‘sole practitioners’. This includes colleagues and managers within our immediate teams and groups and divisions, as well as in other legal divisions and groups, Centres of Excellence and other networks in GLD.

5.2 There is a wealth of expertise and experience within GLD, which you and your clients can benefit from. Take time to get to know who has the relevant expertise in your immediate team, division, or group to help you draw up your advice or take forward other work. Also consider whether that expertise might be found elsewhere in GLD – they may be able to provide valuable input or it may be more appropriate for them to take matters forward on behalf of your client. You should work in an open and collaborative way, drawing on the knowledge and experience of colleagues.

5.3 Ensure that relevant colleagues are aware of the advice that you are giving or actions you are taking, particularly on issues which are complex, cross-cutting or potentially sensitive. Be ready to provide support and assistance to legal colleagues in relation to matters on which you have particular expertise. By sharing information and legal knowledge across GLD we can ensure consistency and efficiency in the delivery of legal services.

5.4 When different lawyers are advising on different aspects of the same matter, join this up for the client; i.e. include all the advice in one piece or explain that you have passed a particular question to a named colleague. Clients should not be left simply to approach another team without helping them to do so.

Working with colleagues in your team, division or directorate

5.5 You are expected to bring your own professional skills and judgement to the advice you give and the work you do. But remember that you are working as part of a team and ultimately your director is responsible to the clients for the quality of all the advice given within your division or directorate.

5.6 After your initial induction period, you will be expected to work with a lot of autonomy. Your manager will not routinely 'sign off' draft advice, prognosis letters, instructions or correspondence with claimant solicitors, nor read every email you write. You will agree where your manager should be copied in. But it is an important part of your professional role to spot complex, cross-cutting or sensitive points and to seek help and support from your manager. You and your manager can then discuss the need to escalate to more senior managers or colleagues elsewhere in GLD.

5.7 GLD has different quality review processes for advisory and litigation work. GLD's Quality Assurance processes enable us to support each other in delivering consistently excellent work, without requiring every piece of advice or correspondence to be cleared by managers. You should be familiar with these quality assurance processes to ensure that the way in which you deliver your work meets the relevant criteria and is consistent with the standards we adhere to across GLD.

5.8 The Lexcel Certification Scheme allows legal organisations to undergo a quality compliance assessment by an independent assessor who can certify that the organisation has complied with the requirements of the Lexcel Standard.

5.9 The Quality Assurance Reviews process requires line managers in advisory and commercial directorates to undertake a quality review (QA) of at least one piece of work each month for anyone they line manage who provides legal advice to clients. QAs will review advice against the core requirements set out in this guidance.

5.10 Get to know the various champions in your team, in particular the Quality Leads, and KM and Induction Champions, and see how they can help you to access legal information and expertise. Get into good habits around storing, sharing and maintaining legal knowledge and know-how notes, making use of eKM and LION wherever appropriate.

Working with legal colleagues across GLD

5.11 The GLD legal organisational structure consists of advisory divisions, specialist expert legal services groups (the Commercial Law Directorate, Employment Directorate and the Litigation Directorate), the Knowledge & Innovation Division and the specialist drafting resource of the SI Hub, which is one of our Centres of Excellence. In addition, other Centres of Excellence provide expert input on legal issues and areas of practice of cross-cutting significance.

5.12 Geographically, GLD lawyers are based in various locations across the UK – most significantly Leeds, Salford and Bristol, as well as London. As well as being spread across different geographical locations, GLD lawyers work a range of working patterns, including hybrid, part-time and flexible working patterns. It is essential that you take time to familiarise yourself with your colleagues' working patterns and plan ahead so that all relevant people can be included in important meetings and calls. Put your own working pattern in your email signature so that others can see your availability.

5.13 When working with colleagues across GLD, you will need to agree who does what and how to minimise duplication.

5.14 A guide to GLD's different legal divisions is available on Eagle. You should take time to familiarise yourself with the work and responsibilities of each department and how their areas might relate to those of your department.

Knowledge & Innovation Division

5.15 The Knowledge and Innovation Division (K&I) is part of GLD's Chief Operating Officer (COO) Group. It is a multidisciplinary group, comprising lawyers and other professions who lead on legal knowledge and learning activity across GLD.

5.16 The K&I Division is responsible for GLD's library services and online legal information resources, planning and delivering GLD's legal learning programme, GLD's departmental knowledge resources, facilitating the work of GLD's Centres of Excellence and our knowledge and learning communities (such as KM Champions), GLD's knowledge systems, including LION, gld.digital, Lawmaker and eKM.

5.17 The K&I Division helps equip GLD's legal staff with the knowledge, innovation and learning resources to provide outstanding legal services. K&I works to develop a knowledge, innovation and learning culture, working across GLD and the GLP in partnership with communities.

5.18 K&I's work includes:

- developing and sharing legal knowledge
- providing legal information services
- developing and maintaining knowledge systems
- developing and running legal learning
- developing innovative ways of providing legal services

5.19 You can find out more about the work of the K&I Division and how to contact them on Eagle.

GLD advisory divisions

5.20 Lawyers in GLD advisory divisions, with the exception of the SI Hub, work primarily for the government departments to which they are linked and will be the first port of call for policy officials advising ministers in those departments.

SI Hub

5.21 The SI Hub drafts approximately 20% of GLD's statutory instruments. All advisory divisions can use the SI Hub. In each advisory division there is a hub 'link lawyer' who is responsible for planning with the hub which drafting work should go to the hub and which should remain in the advisory division, effectively acting as each division's gateway to the hub.

5.22 Along with other departments, the SI Hub hosts a number of lawyers who are Lawmaker 'Superusers' who have experience and knowledge of the Lawmaker platform and functionality. They act as a first point of contact for departmental SI queries in relation to Lawmaker. You should contact your department's superuser for any queries in relation to Lawmaker. Access Lawmaker training, other queries can be directed to Lawmaker@governmentlegal.gov.uk.

5.23 If you have a drafting project you would like to send to the SI Hub, you should first discuss it with your SI Hub link lawyer as they have oversight of the allocation of your department's drafting projects to the SI Hub and will be able to advise you and help with any internal approval process. The SI Hub link lawyer is the lawyer in each GLD advisory division who is responsible for making sure that the right work, and the right amount of work, is dealt with by the SI Hub for that division. Your line manager will be able to advise who is the SI Hub link lawyer in your division.

5.24 The SI Hub is also a Centre of Excellence, providing guidance, support and training to advisory lawyers on drafting issues. You can contact the SI Hub at sihub@cabinetoffice.gov.uk.

Litigation Directorate

5.25 The Litigation Directorate is divided into separate divisions; you can find out more about these divisions on Eagle. Each of these divisions contains a combination of private law and public law teams.

5.26 As well as conducting litigation, litigators lead on litigation strategy and tactics and will advise on merits and litigation risks, working closely with advisory colleagues. Advisory colleagues will assist litigators to build relationships with clients and provide input on the background and purpose of the matters in issue. They will also lead on ensuring policy context and ministerial objectives are properly considered. GLD has developed the roles and responsibilities in conducting litigation, which sets out in more detail the respective roles and responsibilities of the litigation and advisory lawyers when handling litigation.

Commercial Law and Employment Directorates

5.27 Lawyers in these directorates advise commercial and HR specialists across all ministerial departments and conduct litigation on commercial and employment law areas respectively. Government departments directly working on major transactions and service changes may require specialist commercial, property or employment law input. This may be on a 'one-off' basis or may involve setting up a multi-disciplinary team to deal with major projects or complex matters. If you work in an advisory division, think about how and when colleagues from these specialist services should be involved and how the costs can most effectively be managed (see section 2 Working efficiently, above, on charging models).

Centres of Excellence

5.28 Centres of Excellence (CoEs) are formal networks or teams of lawyers in GLD (with some working across the wider GLP) who have particular expertise in a cross-cutting area of law or legal practice and provide a mix of guidance, training and 'subject matter' leadership.

5.29 Whilst we all advise our clients on and in relation to the areas covered by the CoEs, the CoEs supplement and enhance the quality of that work by:

- providing specific expert input on cases and other matters
- creating and maintaining guidance and other knowledge materials
- sharing legal knowledge and experience through regular updates and training for lawyers and clients
- taking responsibility for considering and publicising any strategic trends and 'big picture' issues
- the CoEs also take a lead on co-ordinating the GLD approach in their area. This increases consistency and reduces duplication of effort

5.30 The exact way each CoE does this varies according to the nature of the area covered by it. The overarching rules of engagement and links to more specific detail on the work of each CoE team, how and when to contact them, and where to find their expert guidance on LION, are set out in the Ways of Working with Centres of Excellence guide available on LION and Eagle.

5.31 If you find yourself advising on issues related to the areas covered by the CoEs, do take your lead from the guidance produced by them. The CoEs host a wealth of experience and expertise which you should consult when working on relevant matters. As well as ensuring that we take a consistent approach to our work, consulting the CoEs can help to streamline your work and maximise the value we offer our clients by preventing the need for duplication of work or 'reinventing the wheel'. You should also tell the relevant CoE about any significant work you are doing in their area.

5.32 You can find out more about the CoEs, along with contact details for lead lawyers, on Eagle and LION.

Working with colleagues across government

5.33 Be alert to and spot links or themes across your client department or departments and across government as a whole. Sometimes lawyers are best placed to spot particular issues, or aspects of a policy or way of working that might conflict with something else government is doing. If it is clear that another government department has an interest, make sure that your clients are speaking to them. If your clients do not know who to contact, we can often find a route via legal contacts. If you do not know who to suggest, discuss with your colleagues and managers as they will often have contacts in other divisions or groups in GLD that can be utilised.

5.34 Do not forget that we work for the government as a whole, as well as our individual ministers or clients, and part of our role is to assist colleagues in other parts of GLD or the wider GLP. If there is a disagreement between your clients and a team of officials in a different department, this should not affect your relationship with lawyers advising that team. You can offer to assist by explaining your clients' position. If, after discussion, you decide that the other department has a point, do not be afraid of admitting that and discussing with your clients. Where appropriate, encourage your clients to check that your department's position does not conflict with another department's stated position or an agreed government line.

Devolved administrations

5.35 If you are advising in respect of devolution issues, where appropriate make sure that you speak to relevant devolution legal contacts (in the Office of the Advocate General, the Wales Office, the Northern Ireland Office Legal Advisers team based in Home Office Legal Advisers and the Cabinet Office devolution team). [redacted]

5.36 Remember to consult the Devolution Centre of Excellence if significant or novel devolution issues arise in matters that you are working on. Detailed guidance on devolution issues can also be found on LION.

Law Officers

5.37 The Law Officers are His Majesty's Attorney General, the Solicitor General and the Advocate General for Scotland. The Attorney General is the chief legal advisor to the Government and provides legal advice on both domestic and international law issues.

5.38 The Law Officers are supported by teams of lawyers in the Attorney General's Office and the Legal Secretariat to the Advocate General. These are referred to collectively as the Law Officers' Departments.

5.39 You may need to consult the Law Officers' Departments when working on especially complex or critical legal issues. The general position is that the Law Officers should be consulted "before the government is committed to critical decisions involving legal considerations" (paragraph 2.10 of the Ministerial Code). The Cabinet Manual on the GOV.UK website contains examples of the sort of situations that this is meant to cover.

5.40 By constitutional convention, neither the fact that the Law Officers have advised (or have not advised) nor the content of their advice should be disclosed outside government without their authority (which is given only in extremely rare and exceptional cases).

5.41 The reason for the convention of non-disclosure of the content of the advice is that the Government is entitled to receive frank and confidential advice from its principal ministerial legal adviser and, if that advice is disclosed, it could have the effect of undermining the candour with which advice is given.

5.42 You must get agreement from your director and departmental clients before consulting the Law Officers.

5.43 When working on primary legislation, you will always need to consult the Law Officers' Departments. This is because the Law Officers play a key role in the scrutiny of primary legislation and ensuring that legislation brought forward by the Government is legally sound. The Law Officers' Departments must be consulted on the development of Legal Issues Memorandums for bills and their consent to retrospection in primary legislation and its early commencement must be obtained.

5.44 The Law Officers also have an interest in a number of legislative policy issues and the constitutional propriety of legislation and it may be appropriate to consult the Law Officers on these at an early stage.

5.45 A comprehensive guide to working with the Law Officers on legislation, including templates to use when seeking consent to retrospection and early commencement of legislation, is available on LION. An introductory video on the roles of the Law Officers provides some practical tips on how to work effectively with the Law Officers' Departments.

Office of Parliamentary Counsel

5.46 The Office of Parliamentary Counsel (OPC) is a group of GLP lawyers that specialise in the drafting of primary legislation. OPC's main function is to provide drafting services and procedural and other handling advice to legislating departments in connection with the bills the Government wants prepared for introduction into Parliament (or for publication for pre-legislative scrutiny or other public consultation).

5.47 Book training on instructing OPC.

Working with external lawyers

5.48 On occasions, you may need to seek advice from external counsel. Speak to your line manager and clients before doing so as your clients will have to pay for the cost of this. The Attorney General maintains 5 panels of junior counsel to undertake work for all government departments. This is in addition to the First Treasury Counsel, Sir James Eadie QC, who exclusively does government work, and to the standing counsel to certain departments. In exceptional circumstances an application can be made to the Attorney General to 'nominate' the use of King's Counsel or other off-panel counsel. Junior members of the Bar on the 'junior junior' scheme can also be engaged on certain tasks without a nomination. The Panel Counsel Guidance on the use of Panel Counsel and how to make an off-panel nomination can be found at Panel Counsel on LION and Panel Counsel on Eagle.

5.49 We also work with external solicitors on some matters e.g. commercial projects and we increasingly outsource some advisory and litigation matters too. Firms which can provide external legal services to GLD are on the External Legal Services Panel. As well as a general panel, there are specialist panels for rail and trade. Lawyers should discuss the appointment of external solicitors with senior managers in their divisions. Further general information can be found on the using external legal services pages on Eagle.

5.50 We are also increasingly working with a range of other external providers to help deliver legal work to government, including short-term locum lawyers, temporary agency lawyers and paralegals, eDisclosure solution providers, contract drafting lawyers, freelance legislative drafters (usually former government lawyers or Parliamentary Counsel) and firms with specialist parliamentary drafting teams. Further information on the precise arrangements for how your division or group uses external services can be obtained locally. GLD HR maintains a list of external drafters who are available to take on SI work.

5.51 As well as engaging panel firms and counsel to assist with legal matters, it is also possible to engage their services to provide legal training. To find out more about how to engage the services of external lawyers to deliver training contact the Legal Learning Team within the K&I Division.

Annex 1: Checklist of common legal and litigation issues

When advising clients on legal risks, planning the legal input to projects and conducting litigation for government clients, there are some issues which it is easy to be tripped up by. The following checklist is intended to be a helpful way of making sure that you have thought about whether any of these issues are relevant:

- does the minister or department have the power (common law or statute) to do what is proposed?

- is there any published guidance or policy which is relevant to the area you are advising on?

- have the department or minister(s) made statements or given assurances about particular types of decision?

- do ministers have general duties which are relevant to a decision you are advising on?

- are there any human rights issues raised by the proposal that you are advising on?

- do you need to consider the Public Sector Equality Duty?

- is there a duty to carry out consultation or has one been carried out before?

- are there any other statutory obligations apart from consultation?

- are there any questions about the effects of EU law, either under the Withdrawal Agreement or as retained EU law under the EU Withdrawal Act? To the extent that EU law still applies prior to leaving the EU, do the proposals raise any EU issues around state aid or the Technical Standards Directive?

- are there any international trade law issues raised? Are imports or exports of goods or services targeted or affected? At the border or in UK markets, are goods or services from one country treated worse than goods or services from another country ('most favoured nation' violation)? Are goods or services from abroad treated less favourably than goods manufactured in, or services supplied by, UK suppliers ('national treatment' violation)? Could it create a compliance issue with the UK's international obligations under the WTO agreements and/or the UK's free trade agreements and bilateral investment treaties? Have there been any indications that what is being proposed might present a risk of challenge at the WTO or under international trade agreements?

- are there any other international law points to consider?

- are there any parliamentary points to consider, e.g. handling of relevant parliamentary committees and reports?

- have you considered Managing Public Money? Do you need Treasury approval for your policy/legislation/settling a case?

- are there any procurement law issues?

- where the proposals involve the acquisition or disposal of property, does the department have the necessary powers to deal with the property?

- have you considered Better Regulation issues and factored in any need for approval or removal of another regulatory burden?

- do the proposals give rise to any issues of data protection law?

- do the proposals give rise to any devolution issues? And does the department need to co-ordinate with the devolved administrations?

- if the proposals involve employment law issues, have you considered relevant Cabinet Office guidance? Are the Civil Service Management Code, Civil Service Compensation Scheme, Recruitment Principles or the Civil Service Redundancy Protocol relevant to the proposals? Are Treasury and Cabinet Office approvals needed?

- in potential disputes/disclosure exercises in litigation, bear in mind the duty of candour (in public law) or standard disclosure requirements (in private law), as applicable. Ask yourself whether there are handling implications arising from Cabinet collective responsibility or public interest immunity

- consider how best to obtain the evidence required, including advising on witness statements (see 'General points about witnesses' on gld.digital). Will any details need to be ciphered or redacted? If so, ensure you are familiar with and apply GLD's Personal Data Disclosure Guidance. If redactions are applied by counsel on instructions, always double-check that the redactions have been finally applied before filing or serving

- consider how you might need to adapt your approach in litigation when dealing with a litigant in person

- in litigation, all lawyers need to check that they are carrying out their respective roles and responsibilities in accordance with GLD's guidance and in particular are speaking with one GLD voice to clients and not second-guessing advice being given

- lastly, check that your advice or proposals take proper account of what your clients are trying to achieve and offer solutions wherever you can

Annex 3: Using and contributing to GLD's knowledge resources

Knowledge management (KM) refers to the identification, creation, organisation and sharing of knowledge across an organisation. Effective KM is integral to enabling efficient delivery of quality legal advice.

As well as any local processes in place for KM in your division/directorate, there are several GLD-wide legal knowledge sharing resources that all GLD lawyers should be aware of and use:

LION (Legal Information Online Network) is a legal information sharing platform for the whole Government Legal Profession community (though some sections have limited access for Whitehall lawyers only). It contains legal guidance, practice notes and other resources. Contact: LION.support@governmentlegal.gov.uk

eKM is GLD's knowledge sharing platform. It allows teams to create their own bespoke KM sites, as well as enabling knowledge-sharing across GLD. This can be used to share templates and examples, such as instructions to counsel, instructions to the Office of Parliamentary Counsel, bill products and other guidance. Contact: eKMhelp@governmentlegal.gov.uk

gld.digital hosts a range of legal awareness resources for GLD's clients. It covers a wide range of public law and legislation topics and while it is not intended to replace legal advice, it can help build clients' legal knowledge and avoid requests for legal advice on simple questions. Contact: digital@governmentlegal.gov.uk

In addition, GLD subscribes to a number of legal information services, including LexisNexis and Westlaw. To find out how to access these services, contact Library@governmentlegal.gov.uk

As well as drawing on those resources, all lawyers are expected to contribute to KM, by identifying and sharing legal knowledge on GLD's knowledge systems and through formal and informal learning and other knowledge-sharing activities and, where appropriate, creating and organising it. There are also opportunities to contribute to the work of Centres of Excellence.

Annex 4: Quality criteria and GLD house style for legal advice

Written legal advice should:

- answer the question
- be legally accurate and cover all the necessary legal angles
- be clear and simple (well set out, in good, plain English, avoiding clichés, legal jargon and acronyms)
- be of appropriate length (short and to the point)
- be tailored to the audience (private office/technically aware client etc.)
- address legal risk appropriately (using the language of the Legal Risk Guidance)
- identify key issues and offer constructive solutions to legal problems (to help clients achieve their policy objectives, including options where appropriate)
- take proper account of the bigger picture (e.g. departmental context, cross-government implications etc.)

Wherever possible and appropriate, use a standard format (the house style):

- use the following headings (and bold as appropriate) to guide the reader:

    1 Executive Summary (of the question posed and the answer provided)
    2 Issue (with an appropriate level of background to the question)
    3 Advice and mitigating factors (with options/solutions, as appropriate)
    4 Risk ratings for each of the 3 key elements of risk
    5 Conclusion

- highlight in bold the risk ratings and impact, both in the text and in the Summary, to stand out clearly to the reader
- where providing advice in an attachment, summarise it and highlight the risk ratings in your email
- use Arial font, preferably size 12
- number the paragraphs (and pages, where relevant)
- use short paragraphs with spacing between any bullet points

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For more information contact LKT@governmentlegal.gov.uk