



Government
Legal Department



Department for
Communities and
Local Government



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

MEMORANDUM OF UNDERSTANDING FOR THE PROVISION OF LEGAL SERVICES

BETWEEN

THE GOVERNMENT LEGAL DEPARTMENT

AND

THE DEPARTMENT FOR COMMUNITIES AND LOCAL
GOVERNMENT

AND

THE PLANNING INSPECTORATE

2017-18

PURPOSE

1. This Memorandum of Understanding (MOU) sets out the agreement between:

(1) The **Department for Communities and Local Government (DCLG)**, (2) the **Planning Inspectorate (PINS)**, an Agency of DCLG and;

The **Government Legal Department (GLD)** under which GLD provides legal services to core DCLG and PINS respectively.

2. This MoU supersedes any previous MoU that may be in place for the provision of services by GLD to DCLG and PINS. All parties are committed to delivering the terms of the MOU but it is not intended to be legally enforceable. This MoU can be modified by agreement in writing between the parties and will be reviewed on an annual basis.

SERVICES AND ACCOUNTABILITY

3. GLD will provide legal advice to DCLG and PINS on the full range of business, including advice on policy making, corporate issues including commercial, planning casework, the development of primary and secondary legislation (see Annex D for details of DCLG's Legislation Board) and conduct of public and private law litigation. GLD will also provide ancillary services such as processing of Statutory Instruments, contributions to DCLG and PINS PQs and FOI requests and the sealing of documents.

4. Pre-litigation personal injury claims will be dealt with under the cross-government claims handling contract and litigation will be conducted by either GLD or the Claims Handlers panel in accordance with that contract.

5. DCLG Communications and PINS will continue to be responsible for the handling of press and media for all areas of its work but DCLG Legal Advisers will continue to provide legal advice to support communications activity. These services will be provided under the (combined) fee for DCLG and PINS set out at Annex A – Financial Arrangements.

6. Employment, commercial and litigation services will be charged on an hourly basis. Fees for these services will be charged as per the current GLD rate card. The current rate card and both fixed and variable fees are also shown in Annex A – Financial Arrangements.

GLD will meet DCLG /PINS key requirements, which are:

- High quality, timely and flexible advice provided by suitably skilled lawyers.
- Easy access to lawyers and legal advice that enables DCLG to make effective, risk-based decisions across the full range of its work.

- A good knowledge and understanding by lawyers of DCLG's and PINS' business and policy context.
- An effective litigation service.
- Clear, concise, value for money advice.
- Effective arrangements for managing the provision of legal services.
- Fast and efficient ancillary services e.g. SI processing
- Provision of a watching brief for cases with significant planning authority
- Clear and informative management information
- Effective relationship support

ADVISORY SERVICES

7. GLD will provide legal advisory services largely through its co-located advisory division, DCLG Legal Advisers. The division includes the Planning and Infrastructure team who have lawyers based in both London and Bristol. The Division is managed by the Director of DCLG Legal Advisers. DCLG Legal Advisers will produce work plans for each advisory team as part of the cycle of business management required by GLD and both DCLG and PINS, setting out planned legal work agreed with the relevant business areas. These will be updated quarterly. GLD will aim to respond quickly and positively to requests for additional legal work which may require the provision of additional lawyers. GLD will accommodate such requests within the agreed financial arrangements. See Annex A – Financial Arrangements.

LITIGATION SERVICES

8. Litigation services will be provided by GLD Litigation Group located in GLD's offices in Kemble Street, London. However, employment law advice and litigation services will be handled by the GLD Employment Group located in GLD's offices.

SPECIALIST LEGAL ADVICE

9. When GLD procures external specialist legal services to supplement its own services GLD will oversee and quality assure the advice and will ensure that DCLG and PINS needs are met in an economical, efficient and effective way. Where such external legal services are procured directly, GLD will support the Department in accordance with any arrangements agreed.

LEGAL AWARENESS

10. GLD and the DCLG Intelligent Client Function will promote and enhance legal awareness in DCLG and PINS to ensure that decisions are robust and informed by legal developments. This will include training sessions, workshops, seminars and intranet resources, as agreed and appropriate. The effectiveness and relevance of legal awareness training will be monitored as outlined in Annex C – Performance Measures and KPIs

CORPORATE ENGAGEMENT

11. DCLG Legal Advisers will participate in relevant DCLG and PINS governance structures and will engage in corporate activities where this would contribute to the Department's consideration of legal issues or to more effective working between GLD and DCLG/PINS staff, in particular working with DCLG's Intelligent Client Function (ICF) on improving how DCLG and PINS use GLD (through training, ways of working and performance improvement efforts). Staff on loan to GLD will engage in DCLG corporate events as appropriate.

FINANCE AND MANAGEMENT INFORMATION

12. Financial arrangements and processes in respect of the services covered by this MoU are detailed in Annex A – Financial Arrangements. GLD and DCLG and PINS will work together to ensure that the financial arrangements are mutually beneficial and comply with Treasury rules and guidance. GLD fixed fees are reviewed annually and set each year to ensure that costs are fairly recovered from all clients. In accordance with GLD and HMT principles, GLD does not seek to make profit from its services. The agreed fee for each year covering advisory services to DCLG and PINS will be set out in separate correspondence from the Director of DCLG Legal Advisers to DCLG. Clients will directly and proportionately benefit from any efficiency gains and savings achieved. The Director of DCLG Legal Advisers will provide the assurance required by DCLG and PINS Accounting Officers that will allow them to discharge their responsibilities.

13. GLD will present management information (MI) to clients, enabling them to make informed choices about how and where to spend their legal budgets. DCLG and the Business Manager of DCLG Legal Advisers will meet quarterly to discuss MI as an agenda item. Arrangements for meetings between GLD and PINS to discuss performance are outlined in Annex C – Performance Measures and KPIs

ORGANISATIONAL STRUCTURES AND RESOURCING

14. GLD may revise its structure and organisation to respond to levels of work and other business needs. DCLG's Finance Director and the Intelligent Client Function or a nominated representative and the Director of Finance for PINS will be consulted on any significant proposals affecting the legal service beforehand. GLD will ensure arrangements are in place to respond to urgent business requirements where possible and will work with clients to agree the approach to resource requirements and any associated direct costs which may fall outside of the scope of this agreement.

15. GLD will be responsible for the recruitment of GLD staff providing the services set out in this MOU. Support staff on loan to GLD from DCLG will be subject to the DCLG performance appraisal system. PINS will provide the advisory team based in Bristol with secretarial support (1 FTE) at no cost. Any changes to these arrangements will be agreed by the

Director of DCLG Legal Advisers and the Director of Finance for PINS or his/her nominated representative.

ACCESS TO IT, ACCOMMODATION AND ON SITE FACILITIES AND SERVICES

16. DCLG and PINS will continue to provide the full range of IT and telephony services to GLD lawyers co-located within its estate in accordance with its own ICT strategy and policies. Changes or upgrades to the DCLG/PINS IT service should continue to allow access to the GLD intranet and the GLD TRENT HR system, achieved through normal GSI internet access. DCLG and PINS will also continue to provide accommodation within its offices and the full range of on-site facilities management services. GLD and DCLG will consult each other with regards to any potential changes in requirements and provision which could have a material impact on the delivery of the service set out in this agreement. While GLD staff are covered by the GLD Health & Safety policy, DCLG and PINS will provide facilities in compliance with Health & Safety requirements.

17. GLD staff who are co-located with DCLG/PINS are included in the respective building's Business Continuity and Disaster Recovery Plans but GLD will ensure that there are also workable and current business continuity and disaster recovery plans which will be implemented in the event of an unexpected instance which will safeguard legal and departmental information held by GLD. The plans will be sufficiently robust to assure DCLG and PINS against service interruption.

SERVICE QUALITY AND STANDARDS

WAYS OF WORKING

18. GLD, DCLG and PINS will work closely to ensure that appropriate legal advice is fully incorporated in decision making and that clients receive the best value for money from the legal services provided. The partnership will be characterised by open and frank relationships, regular feedback to be incorporated in meetings, informed by MI, shared planning and priorities and arrangements for evaluation and review.

19. When legal matters are in issue, DCLG and PINS will involve the relevant GLD lawyers as early as possible, seeking to identify the issue, explain the background and provide additional information where necessary so that lawyers are able to give informed advice. Multi-disciplinary team working (e.g. between lawyers, policy officials, planners, finance and/or analytical colleagues) will be the norm to facilitate high quality decision making.

20. Timings for advice will be discussed and agreed between client and lawyer as part of the on-going collaborative working relationship that will be the core feature of this service.

Where work is not part of a planned programme, GLD will work closely with DCLG and PINS colleagues to identify how existing work can be rescheduled or re-prioritised in order to release capacity for important work. Lawyers will keep clients informed about progress, give regular updates and give advance notice of any difficulty in meeting an agreed timetable.

21. GLD will provide clear and comprehensible advice which avoids legal jargon, assesses legal risk and focuses on finding solutions that meet departmental objectives.

22. Performance against KPIs, as detailed within Annex C - Performance Measures/KPIs will be monitored throughout the year.

RELATIONSHIP MANAGEMENT

23. At a senior level, the Director of DCLG Legal Advisers will act as Relationship Manager for all GLD services, ensuring that DCLG and PINS needs are met. GLD lawyers will provide a seamless service to DCLG and PINS clients wherever they are located and will ensure that the Relationship Manager is kept advised of significant issues and legal risks.

24. At an operational level, the Business Manager for DCLG Legal Advisers will feed in to the relationship management and business-as-usual activities, including regular meetings, and will report to the Relationship Manager as required. The Head of the DCLG Intelligent Client Function (ICF) will act as Relationship Manager, reporting to the DCLG Finance Director on behalf of the DCLG Accounting Officer. The ICF will involve other parties as required. For PINS, PINS Head of Finance shall act as intelligent customer and relationship manager on behalf of PINS Accounting Officer.

25. GLD will work in partnership with DCLG and PINS to maximise effective working between teams and the value for money of legal services. GLD will play a full role in the risk management arrangements within DCLG and, where appropriate, PINS, including escalating key legal risks where necessary. GLD will work closely with legal teams in other government departments, NDPBs and external legal teams to protect and promote the interests of DCLG, and PINS where appropriate. The Director of DCLG Legal Advisers will act in the interests of DCLG, and where relevant, PINS, in respect of the legal services it receives or commissions, whether from GLD or others, in liaison with the ICF or PINS Head of Finance as appropriate.

26. DCLG and PINS' mutual interests pertaining to this MoU will be represented by the ICF in liaison with PINS Head of Finance, reporting, where necessary, to the DCLG Director of Finance. Interests which are particular to PINS will be represented by the PINS Director of Finance for PINS, in liaison with the ICF where required. This key part of the governance and control arrangements will help ensure that service levels remain appropriate, quality of service is monitored, issues are addressed, value for money and efficiencies are delivered and savings are returned to DCLG.

FLEXIBILITY AND EMERGENCY COVER

27. GLD will work flexibly to meet DCLG and PINS business needs, keeping business plans and priorities under regular review and making appropriate arrangements for cover outside normal office hours and in emergencies.

INFORMATION SECURITY

28. GLD will secure and manage DCLG and PINS information in accordance with DCLG and GLD standards for information security. DCLG and PINS retain their rights to have access to information handled by GLD.

FEEDBACK

29. DCLG Legal Advisers will conduct an annual survey to measure client satisfaction in core DCLG and PINS to help ensure that the needs of the clients are being met. The objective for GLD is that 95% of clients find the service good or excellent overall. The survey covers (a) quality of service, (b) understanding of business environment, (c) speed of response, (d) keeping clients informed of progress, and (e) quality of individual relationships. Client satisfaction measures can be amended by agreement if there is a need to better reflect performance through other tools or measures. See also Annex C– Performance Measures/KPIs

ESCALATION AND DISPUTE RESOLUTION

30. The Director of DCLG Legal Advisers is responsible for managing the relationship between GLD and DCLG and PINS. Any complaint, difficulty or dispute should be referred to the Director of DCLG Legal Advisers who will seek to resolve it with the ICF, acting on behalf of DCLG and Head of Finance at PINS acting on behalf of PINS. Where appropriate the issues will be escalated internally within DCLG and PINS. If DCLG or PINS are dissatisfied with the response to any disagreement, they may refer the matter to the Director General Legal Services, Directorate C.

SIGNED

Name:

Signature:

Title: Director of DCLG Legal Advisers

Date: 21/6/17

Name:

Signature:

Title: Director of Finance, the Planning Inspectorate

Date:

Name:

Signature:

Title: Director of Finance, DCLG

Date: 19/06/17

ANNEX A - FINANCIAL ARRANGEMENTS

A1. GLD will charge DCLG the fixed annual fee for legal advisory services for DCLG and PINS. The (combined) fee will be invoiced quarterly in advance. DCLG will recharge PINS for advisory FTE used in each quarter.

A2. For reference, the current agreed fixed fee at the time this MoU is agreed can be seen below:

	Fees 16-17 £	Fee 17-18 £
DCLG	4,352,900* (inc £99.5k recharge)	
PINS	646,441	
Total	4,999,341	4,816,000 (no recharge)

**There was an in year (16-17) credit of £75k (rounded) realised by changing the charging arrangements for provision of commercial advice from a recharge on the fixed fee to hourly charging (on the variable fee) from 1 July 2016. The total DCLG was billed in 2016-17 was £4,278,327.*

A3. The figure for 2017-18 represents a 4% (rounded) reduction to the fee for 16-17 on a combined fees basis.

A4. The GLD legal advisory service will be measured as per Annex C – Performance Measures/KPIs. As GLD does not aim to generate an overall surplus or profit from any individual client, any structural efficiency gained will automatically feed into the following year's fixed fee or by arrangement in-year. In addition, the annual fixed fee may vary according to planned or anticipated changes in demand or by agreement through efficiency requirements. Changes in demand will be agreed in consultation with DCLG/PINS. The fixed fee will be agreed by the end of the January preceding the financial year to which it relates, and will be signified through an exchange of letters.

A5. All parties will work together to resolve any major budget issues arising from a significant in-year and unplanned change in demand for legal advisory services. However, in principle, it is expected that if there is a significant:

- increase in demand: this will be accommodated within the original fixed fee unless GLD is set to materially under-recover its costs for the DCLG/PINS advisory work and will also under recover its costs from fixed fee advisory work in general; and
- decrease in demand: the fixed fee will not be reduced in year but the change in demand will feed into the setting of the following year's fee unless by agreement.
- GLD appreciates that re-negotiations around the fixed fee may be required in the event of departmental efficiency reviews or machinery of government changes. GLD will work with DCLG/PINS and DCLG undertakes that any amendment to the fees will be discussed as early as practicable to allow GLD to adequately adjust resource or the service it provides.

A6. Whilst the fixed fee covering advisory work is charged to DCLG on a combined fees basis, GLD will continue to charge DCLG and PINS separately on an hourly basis for litigation, commercial and employment services. Litigation and employment services comprise all contentious and other matters that would have, prior to this agreement, been handled by GLD's Litigation or Employment Group. Commercial advice for both DCLG and PINS is handled by GLD's Commercial Law Group.

A7. The fee per hour for litigation, commercial and employment services will reflect the current GLD hourly rate card. The rate card at the time this MoU is agreed is below for reference:

DESCRIPTION	INVOICING CODE	DEC 12 – MAR 15	AS OF APR 16
Head of Division	HOD	£165	£165
Senior Civil Servant	SCS	£123	£123
Senior Lawyer (G6)	6	£108	£108
Lawyer (G7) and Junior Lawyer	(Legal Officer) 7/LO	£93	£93
Senior Executive Officer, Higher Executive Officer	SEO/HEO	£78	£78
Legal Trainee, Executive Officer, Administrative	LT/EO/AO	£64	£64

Officer			
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A8. Litigation, commercial and employment work and associated disbursements will be billed monthly in arrears.

A9. The variable fee for DCLG for 17-18 is outlined below.

	16/17 Budget	17/18 Budget
GLD Litigation (& OPC fees)	£1,610,000	£1,610,000

A10. The DCLG variable fee will be managed and monitored as part of the overarching budget management of outsourced shared services by the ICF, with assistance and input from GLD where required. The DCLG variable fee includes the cost of Parliamentary Counsel. Other legal disbursements (e.g. counsel and third party advice) costs for litigation are charged to DCLG and PINS variable fees.

A11. For DCLG, GLD litigation lawyers dealing with costs in liaison with policy clients seek instructions from the Legal Director, (or the relevant Deputy Director in DCLG legal advisers) to:

- Negotiate parameters for both adverse costs (where DCLG loses a case) and costs owed to DCLG (where the department wins a case)
- Where DCLG has won a case but payment has not been made, to proceed further if the High Court recovery stage has been reached with no apparent progress in recovery of costs
- write off of costs where there is no hope of recovering costs or further pursuit of recovery would not be vfm
- approve the outcome of negotiations and payments.

A12. In considering these issues the Legal Director will discuss any difficult/large cases with the head of litigation team B5 and ICF prior to providing final instruction to the litigation lawyer and the policy client.

A13. For PINS all variable fee costs require the approval of the Finance Director prior to costs being incurred and /or progressing with an instruction.

A14. Separate invoices will be raised for DCLG and PINS services under the variable fee.

A15. For clarity, third party legal costs that fall outside the fixed fee and do not relate to the litigation, employment or commercial work handled by GLD are expected to be billed by the supplier and settled by DCLG/PINS direct. All invoices shall be sent electronically via email. Queries arising from invoices shall be dealt with by DCLG and PINS Finance with assistance from GLD Legal Advisers.

ANNEX B – THE DCLG INTELLIGENT CLIENT FUNCTION

ENGAGEMENT WITH DCLG'S INTELLIGENT CLIENT FUNCTION TEAM (ICF)

B1. DCLG Legal Advisers will adopt an open door approach to engaging with the ICF and will keep in regular contact to discuss the service. For example

- The Business Manager of DCLG Legal Advisers will meet with the ICF fortnightly to discuss service matters and quarterly to discuss MI, budget and finance matters.
- The Director of DCLG Legal Advisers will join the quarterly meeting with the ICF and will have regular meetings with DCLG Director of Finance at least monthly. If these meetings are required more frequently these will be by arrangement.
- GLD will work closely with the ICF around maintaining a quality service for both DCLG and PINS and the identification of efficiency opportunities. GLD and ICF will work towards continuous improvement through demand management and process improvement.
- Under the (combined) fixed fee arrangement, the ICF will liaise directly with PINS' Finance Director on financial and forecasting matters. There will be a recharge arrangement in place where PINS are recharged on a quarterly basis for legal advisory FTE used
- The Head of the Planning and Infrastructure team in DCLG Legal Advisers will liaise with the Chief Planning Inspector in PINS to discuss demand and legal FTE requirements
- DCLG Legal Advisers will provide MI to support and inform those discussions

B2. The ICF will be kept informed of cross-cutting work that the DCLG Legal Advisers senior leadership team will be undertaking under separate work strands, as follows: legal quality, service provision, client capability, people and change

B3. The Business Manager of DCLG Legal Advisers will help to facilitate those discussions.

ANNEX C – PERFORMANCE MEASURES /KPIs

- 1 DCLG and PINS recognise that, as customers, they have a role in the timely engagement of legal services and have a part to play in maintaining quality. An example of this is in making staff available for meetings and in the submission of clear, well written requests. The ICF will be working with GLD and internal customers to improve quality of requests and to focus on efficiency through demand management
- 2 The following KPIs have been agreed.

Statutory Instruments

Fewer than 10 percent of S.I.s (measured from financial year to financial year, beginning 1 April 2015), receive an adverse JCSI report that relates to legal drafting errors or failure to follow correct statutory instrument procedures.

This KPI focusses on the number of adverse JCSI reports received by GLD that relate to errors in statutory instruments for which Legal takes prime responsibility – including defective drafting and failure to follow correct statutory instrument procedure.

All Statutory Instruments completed within the timescales agreed by the relevant Policy lead and lawyer. This will be measured from financial year to financial year beginning 1 April 2015.

The essence of this KPI is that (a) the delivery plan for an SI (and any subsequent changes) is agreed between Legal and Policy and (b) Legal delivers against that plan.

Client Survey

A minimum satisfaction level of 95% should be received per annual Client survey (Anticipated minimum number of returns - more than 15 responses)

This KPI is a key metric for the GLD overall.

Legal Awareness

A minimum customer satisfaction rating on feedback form of 95% or greater scoring 3-5 (good-excellent) for all legal awareness courses (run in a quarter).

NB - the ambition is to achieve KPI targets 100% of the time. Any variance against specific targets and exceptions to this will be discussed with the ICF and will be included in regular performance meetings.

ANNEX D - DCLG'S LEGISLATION BOARD

A Legislation Board has been established to provide strategic oversight of all of DCLG's legislative activity and to manage delivery risk. The Legal Director and senior lawyers will work in collaboration with DCLG in the running of the board. Legal will also liaise with Parliamentary Counsel and the SI hub to ensure regular representation and input.

The *Terms of Reference* for the board are set out below

1. Primary legislation

- (a) Review progress on primary legislation NP&I Bill
Jobs & Growth Bill
- (b) Monitor/horizon scan new proposals for primary legislation e.g. homelessness;
hand out bills
- (c) Consolidation of possible bids

2. Secondary legislation

- (a) Review progress on implementation
- (b) Consider SI tracker

3. Reputational issues connected with legislative programme

Monitor DCLG's relationship with Parliament and other key stakeholders such as whips, Parliamentary Counsel and Cabinet Office

4. General

- (a) Resource issues
- (b) General process issues, including timing, clearance etc.