

MEMORANDUM OF UNDERSTANDING

RELATIONSHIP BETWEEN THE STATES OF GUERNSEY AND THE CHAMBERS OF THE LAW OFFICERS OF THE CROWN ("GOVERNMENT LEGAL ADVISERS")

This Memorandum of Understanding clarifies and builds upon the relationship between the States of Guernsey and the Chambers of the Law Officers of the Crown when acting as the government legal advisers.

In this context, the States of Guernsey includes the Committees, the services areas that provide support to the Committees, and individual members of the States of Deliberation, and may be collectively described as the government in Guernsey.

The Chambers of the Law Officers of the Crown are referred to as the government legal advisers in this Memorandum of Understanding which relates to the work that Chambers undertake on behalf of the States of Guernsey.

The Memorandum of Understanding takes account of the findings and recommendations of the review into the relationship between the States of Guernsey and St James Chambers commissioned by the Policy & Resources Committee and concluded in July 2017; and having been agreed by the parties in March 2018 was reviewed and reaffirmed in March 2019.

The Memorandum of Understanding is to be reviewed annually and, where agreed by both parties, updated and revised.

The Memorandum of Understanding is based on a series of agreed principles to support good governance and the rule of law, to ensure mutually beneficial working practices, and to achieve value-for-money:

- Clear overall responsibilities in the working relationship
- Clear and co-ordinated process for the commissioning and provision of legal advice from the government legal advisers by the Principal Committees and Boards
- Clear and co-ordinated process for the commissioning and provision of legal advice from other providers
- Clear relationship between the government legal advisers and individual members of the States of Deliberation
- Ensuring value for money
- Clear roles and stronger working relationships
- Professional responsibilities
- Enhanced and shared skills
- Continuing to enhance transparency
- Co-managing litigation effectively
- Monitoring capacity and capability
- Managing conflicts of interest
- Information management

1. Clear overall responsibilities in the working relationship

1.1 The government legal advisers will provide legal services in the following principal areas: Law Officers functions (statutory, customary and constitutional); delivery of an independent prosecution service; civil litigation; legislative drafting for the Bailiwick; civil advisory services; commercial law services; mutual legal assistance; international representation in relation to the fields of criminal justice, taxation, financial regulation and others areas of law; and provide such services to all islands of the Bailiwick and, where relevant, other public service clients.

1.2 The States of Guernsey will provide and manage accommodation and facilities in accordance with the needs set out by and agreed with the government legal advisers, and consider long-term requirements as part of the wider estates management plan. It will also provide budget and financial management support including a finance business partner, continue to provide human resources support, and continue to provide IT and records management support including through an IT business partner.

2. Clear and co-ordinated process for the commissioning and provision of legal advice from the government legal advisers by Committees and Boards

2.1 Where possible, requests for legal advice on behalf of Committees will be made by the Committee Secretaries (or equivalents) to those Committees in writing, and where possible the Committee Secretaries (or equivalents) will seek pre-emptive advice.

2.2 Legal advice from the government legal advisers will be provided in full to Committees as an appendix to any Committee papers for decisions. Where possible legal advice will be provided in writing, subject to agreement to the contrary.

2.3 Representatives of the government legal advisers are to be invited when necessary or appropriate to Committee meetings to answer any questions on their advice during relevant discussions, and a copy of any paper to Committees referring to legal advice provided by the government legal advisers is to be shared with those advisers.

2.4 The government legal advisers are to be informed if the advice that they have given is likely to be shared or published in full or in part beyond the relevant Committee and (in accordance with established practice) their agreement is to be obtained before any such publication is made. The government legal advisers are to advise the States of Guernsey on whether it may or may not claim legal privilege; and to explain why in a format that can be published if necessary and agreed.

2.5 The Committee Secretary may agree a different process with the government legal advisers for any particular item or type of advice, and this process should not prevent the routine requesting of advice by committee officers.

3. Clear and co-ordinated process for the commissioning of legal advice by the States of Guernsey and provision of legal advice from other providers

3.1 Discussion will be undertaken between the Law Officers or Director of Legal Services and members and/or officers of the relevant Committee on any issues where it is felt more appropriate to commission legal advice from outside the government legal advisers, for example in those cases where the government legal advisers cannot meet specific client requirements (see also section 11 below).

3.2 A process is to be formalised and communicated to Committees on the decision-making and process relevant for the commissioning of legal advice from other/non-government legal adviser providers.

3.3 Where the government legal advisers commission legal advice on behalf of the States of Guernsey, the full legal advice is to be shared with the relevant Committee unless it relates to a prosecution or other confidential matter (such as child care proceedings); the opportunity is to be afforded for the States of Guernsey representatives to meet the providers of the legal advice; and all incurred and potential future costs are to be set out to the best of the government legal advisers' knowledge.

3.4 Where appropriate the Law Officers or Director of Legal Services will assist in providing a brief to potential providers and support in the commissioning of the legal advice. The brief and support will normally include advice and comment relating to the cost of the legal advice and the application of that legal advice.

3.5 The government legal advisers cannot underwrite the advice or other services provided by external providers, and the Committees and/or their officers must put the necessary arrangements into place for liaison with, instructions to and payment of external lawyers.

4. Clear relationship between the government legal advisers and individual members of the States of Deliberation

4.1 The government legal advisers will issue a guidance note or other communication to members of the States of Deliberation setting out the roles and responsibilities of the Law Officers and the government legal advisers as a whole in relation to requests for advice from individual members of the States of Deliberation, taking into account the functions of the new Parliamentary Clerk.

5. Ensuring value for money

5.1 The States Treasurer will allocate a finance business partner to work with the Director of Legal Services to provide robust financial performance data and analysis, and to provide support in the development of any business cases for service developments or capital investment. This will support the government legal advisers in managing its resources within the cash limit allocated annually by the States following discussion with the government legal advisers, and where necessary to notify Treasury as soon as practicable of any material cost pressures or any exceptional costs which may require funding from the Budget Reserve.

5.2 Officers will advise on any cost ceiling at the beginning of any legal work if known, and the government legal advisers will advise of any issue or risk that may result in any cost ceiling set out being exceeded.

5.3 A framework will be established for potential providers of legal advice outside of the government legal advisers, led by the Director of Procurement and the Director of Legal Services.

5.4 The government legal advisers will include in their annual report so far as practicable the financial value of legal advice provided to each Committee and/or service area in accordance with the notional tariff and fee rates published by the government legal advisers; and provide updates to the Chief Executive Officer annually or at other agreed intervals or occasions.

6. Clear roles and stronger working relationships

6.1 The States of Guernsey will invite the Law Officers or Director of Legal Services to the meetings of the Senior Leadership Team and to the meetings of the Portfolio Board when legal advice or other legal input is required, or when matters of mutual interest are being discussed. The government legal advisers will present reports when required to the Chief Executive Officer of the States of Guernsey on achievement of agreed corporate objectives, so far as relevant and feasible.

6.2 The Policy & Resources Committee and the government legal advisers will keep each other informed of matters being considered that are of mutual interest, and the government legal advisers will be invited to meetings of the Policy & Resources Committee on such occasions as may be agreed, on at least a quarterly basis, to provide legal and constitutional advice and to discuss matters of mutual interest and concern.

7. Professional responsibilities

7.1 States of Guernsey officers will abide by the Civil Service Code in all dealings with the government legal advisers, and will adhere to the Litigation Directive.

7.2 Members of the States will abide by the Code of Conduct for States Members of the States of Deliberation in all dealings with the government legal advisers.

7.3 The government legal advisers will continue to adhere to professional codes of conduct, including professional and ethical duties to the Royal Court, and to follow the Prosecutors' Code of Guidance, Model Litigant Policy and Litigation Directive. They will also ensure that where a conflict of interest arises which cannot be dealt with internally by a 'Chinese wall' within Chambers, the Law Officers or Director of Legal Services will advise the Chief Executive Officer; and seek to reach agreement on how that conflict is to be managed.

8. Enhanced and shared skills

8.1 Both parties will work together to develop a programme of induction and other training for senior civil servants and graduate officers to include better understanding of legislative processes; how to provide instructions for drafting laws, ordinances and subsidiary legislation; legal and financial risk management in line with the Litigation Directive; and the necessity to seek legal advice at the earliest opportunity to minimise risk. The training will be delivered by the States of Guernsey with appropriate input from the Law Officers or Director of Legal Services.

8.2 Both parties will also consider together with the States Assembly and Constitution Committee providing corresponding training to new Members of the States with a view to them understanding their role and potential conflicts (as individual Deputy for their district, Committee member or in quasi-judicial capacity as decision-maker).

9. Continuing to enhance transparency

9.1 The States of Guernsey will support the government legal advisers in the secure hosting of a bespoke website.

9.2 The monitoring and reporting of performance and financial data in relation to the operations at the government legal advisers will be supported through the work of a finance business partner, enabling the government legal service to publish so far as practicable performance measures and financial data in their annual report.

9.3 The government legal advisers will issue, when necessary, clarification to States Members, Committees and officers of the roles and responsibilities of the Law Officers as heads of profession and quality assurance; and of the Director of Legal Services as head of service.

10. Co-managing litigation effectively

10.1 Both parties will continue to adhere to the Litigation Directive. They will also arrange for the Law Officers or Director of Legal Services to join appropriate project boards as legal adviser and attend when necessary; and if feasible the government legal advisers will set out the financial value of legal advice provided to the project board in accordance with the notional tariff and fee rates published by the Law Officers.

11. Monitoring capacity and capability

11.1 At quarterly or at other agreed intervals or occasions, there will be meetings of the following to monitor and resolve resourcing, capability and capacity issues, and to ensure alignment with the States of Guernsey's legislative priorities agreed with the government legal advisers: HM Procureur and/or HM Comptroller; Director of Legal Services; Director of Legislative Drafting (or other Director if appropriate); Chief Executive Officer; the Strategic Lead for Supporting Government; and the States Treasurer..

11.2 In the event of a significant likely cost arising in respect of a prosecution or mutual legal assistance or asset recovery matter, the Law Officers will raise this issue with the States Treasurer at the earliest possible opportunity, so that the States Treasurer can identify an appropriate source of funding.

11.3 The government legal advisers will advise the appropriate Committee Secretary or equivalent, or raise directly with the Chief Executive Officer, where the government legal advisers do not believe, taking into account all relevant factors including the responsibilities referred to in section 7 above, they have the capacity and/or capability to meet specific requirements of the States of Guernsey as a client; or where the government legal advisers are concerned that the States does not have the capacity and/or capability to correctly interpret or apply legal advice provided.

12. Managing conflicts of interest

12.1 The States of Guernsey will advise the government legal advisers clearly if there are conflicts of interest within the States of Guernsey or between the States and the government legal advisers.

12.2 The government legal advisers will continue to adhere to its Conflicts of Interest in Chambers policy.

13. Information management

13.1 The government legal advisers will implement firstly the States of Guernsey data retention policies so far as appropriate and not in conflict with, for example, professional rules of conduct, best legal practice and relevant legislation; and secondly the government legal advisers' internal data retention policies.

To be reviewed and to be revised as appropriate on annual basis

27th June, 2019:

*Chief Executive Officer
States of Guernsey*

HM Procureur

*President
Policy & Resources Committee*

HM Comptroller

*Director of Legal Services,
St James's Chambers*