

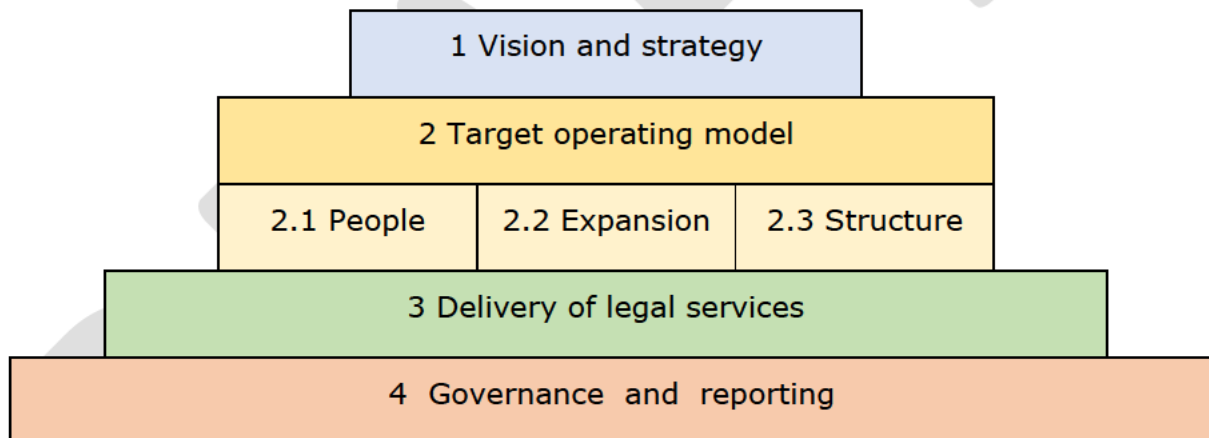
Title: ICO25 - ICO Legal Service - Target Operating Model

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FROM JOHN AND PAUL RECEIVED ON 15/12/22]



This ICO Legal Service (ICO Legal Service) target operating model will form the long-term basis for a high performing Legal Service, which will be instrumental in delivering ICO25. Some key elements (such as matrix management as part of a PACE team) are already implemented and working.



1. Vision and strategy

The ICO has recognised that a well-resourced legal service is vital to driving the key tenets of ICO25. We have been asked to prepare a Target Operating Model that reflects this.

The ICO Legal Service performs an important and unique function (in other words, we provide a **special sauce!**).

The General Counsel, supported by the ICO Legal Service, provides assurance to the Commissioner and the Executive Board, that ICO decisions are legally robust, legal risks are identified and mitigated early, and opportunities for improvement in ICO's work are fulfilled, right across the ICO.

This, in turn, ensures the ICO's public output is both customer-centric and consistent with our position on legal issues (such as in relation to guidance, regulatory action, litigation and comms).

Legally robust decisions put the ICO in a good position to successfully defend its decisions in the Tribunal or in Court. The ICO Legal Service conducts all of the litigation itself.

The team contains recognised experts in our field, who both deliver expert legal advice and support and coach others to develop.

Of course other ICO staff understand legal text and can apply ICO guidance. The ICO Legal Service's legal advice and interpretation of information law is much more. It brings together expertise in information law, public law, commercial law, consumer law, competition law and other legislation; it considers caselaw, laws in other countries, how private practice lawyers apply the law, the impact on UK organisations, and ultimately our view how UK Judges would interpret the law and for litigation, how the Tribunal and Court will respond to our legal case and evidence. This is then distilled into delivering specific legal advice focussed on the needs of the ICO and its stakeholders.

1.1. Our vision

The ICO Legal Service aims to be customer-centric, curious and collaborative, with a focus on the following:

- Assurance to the Information Commissioner:
 - in respect of **legal risks** by: identifying, and providing creative solutions to manage these risks to deliver the ICO 25 strategy.
 - in respect of the **opportunities and quality** of the work of the ICO, ensuring that the ICO's outputs meet ICO 25 standards.
- A customer-centric team of trusted advisers: working collaboratively and pro-actively with colleagues across the ICO to deliver creative and solution focused outcomes and deliver projects with impact and on time.
- A centre of legal excellence, with a culture of kindness and respect: by continually learning and developing expertise, including through training and coaching and listening to external experts and lawyers.
- Profession Leadership: The General Counsel as Head of Profession will provide leadership for all lawyers in the ICO whether their day to day work is within a Legal Directorate or outside (eg as a member of a PACE team).

1.2. Our strategy

Our strategy is to design an ICO Legal Service which aligns with the following principles, which come from our ICO Legal Service Risk Map and ICO25:

Pillar 1: Our people

- People are at the heart of the ICO Legal Service.
- We need the right number of people, with the right skills, working collaboratively across the ICO. A well-resourced, well-managed ICO Legal Service provides the best value to the UK public.
- To attract and retain high calibre lawyers, ICO Legal Service must provide an attractive work environment with opportunities to learn and progress their careers. This includes developing expert legal skills, coaching, supervision and mentoring.

Pillar 2: Integrated way of working

- We fully support integrated ways of working across the ICO. This has two elements:
- **Line management:** all ICO lawyers will be line managed within the ICO Legal Service and be assigned to a Directorate which serves as their "home". But ICO lawyers will work fluidly across the entire ICO Legal Service in the interest of upskilling and effective work allocation.
- **Integrated work:** ICO Lawyers may be assigned to work outside of the ICO Legal Service as part of our move to **matrix management**. For example, Lawyers will be assigned to PACE teams and key workstreams, collaborating with colleagues in an agile way to meet ICO requirements and manage legal risk.
- Day to day work of these lawyers will be directed by (for example) the PACE team lead, with line management and accountability for the legal advice going back to the ICO Legal Service, and ultimately the GC.
- We currently have matrix-managed lawyers assigned to Project **FOIA s.31**, the BCR team, and the new Cyber Security Principal Lawyer (who will sit within the new Cyber Security team, with a reporting line to the ICO Legal Service).
- **Lawyers in other roles:** We fully support the recruitment of legally qualified staff into non legal roles due to their skills mix and experience (eg the Director of Regulatory Risk and Supervision, who is leading the **FOIA s.31** PACE team). This model will be of enormous benefit to the ICO.
- The ICO Legal Service will remain the source for all legal advice given by ICO Lawyers working inside or outside of the ICO Legal Service, with accountability going back all the way to the General Counsel. The General Counsel will not be accountable for the work of legally qualified staff performing non-legal roles (and who are therefore not providing legal advice).
- ICO Lawyers will continue to support any ICO staff who are legally qualified working in a non-lawyer role, and who wish to join the ICO Legal Service. For example, offering opportunities to build experience such as temporary secondments, and with mentoring.
- **Alignment with ICO25 and risk:** ICO Legal Service will reflect ICO25 and the ICO's approach to **risk** in the resource allocated to matters, and ensure

its legal advice is aligned with that approach. Legal advice must be proportionate to the needs of the ICO and its stakeholders, to ensure a customer-centric approach.

Pillar 3: Expansion

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1.3. Our starting point: the ICO Legal Risk Map and the ICO Legal Service current structure

See Appendix 1 for the ICO Legal Service Risk Map and Appendix 2 for the current organigram and a description of our current structure.

2. Target Operating Model

2.1. Our People

In this section we describe the people who deliver the ICO legal service, their different roles and skills, and how we ensure they continue to develop.

(a) ICO Legal Service lawyers

ICO Legal Service lawyers will deliver legal services as follows:

General Counsel	<p>Head of profession.</p> <p>Provides assurance and strategic legal advice to the Commissioner, and oversight to ICO Legal Service.</p> <p>Accountable for all legal advice in the ICO.</p>
Directors and Heads of	<p>Manage Directorate.</p> <p>Provide strategic legal advice on complex and/or high risk matters.</p> <p>Provide oversight, supervision, coaching and mentoring to other lawyers.</p> <p>Heads of responsible for objective setting of Principal Lawyers and Lawyers (the latter in conjunction with Principal Lawyers).</p>
Principal Lawyers	<p>Manage Lawyers.</p> <p>Provide strategic legal advice on complex and/or high risk matters.</p> <p>Provide supervision, coaching and mentoring to other lawyers.</p>
Lawyers	<p>Provide legal advice on matters and (where appropriate) supervision to other lawyers.</p>
Paralegals	<p>Provide legal advice and administrative support on matters with supervision from a lawyer.</p>

(b) Matrix managed lawyers

We will provide legal services which are customer-centric and focussed on delivering for the ICO impactful outcomes at pace. This will be done in two ways:

- (a) ICO Lawyers assigned to work on PACE teams or key workstreams, as an integrated member of the case team, under the direction of the project lead. For example the ICO lawyers assigned to Project **FOIA s31**.
- (b) ICO Lawyers , exclusively assigned to work with another ICO Directorate, such as the new Cyber-Security Principal lawyer.

Day to day work of these lawyers is directed by the ICO Directorate or PACE team, with supervision and accountability for the legal advice resting with ICO Legal Service and ultimately the GC. ICO lawyers will be operating as full members of the project team, pro-actively offering to help with all tasks which benefit from a legal skill set (Eg drafting documents such as Notices of Intent and Information Notices; feeding into project plans; producing an evidence strategy and engaging with evidence; communication with parties under investigation; etc).

(c) Work allocation

This will be done centrally across the ICO Legal Service for significant and resource intensive cases (eg requiring 1 FTE Lawyer). For smaller day to day queries, work will be allocated locally within each Directorate. Allocation decisions will reflect the ICO's risk appetite and the requirements of ICO25.

(d) The Legal Leadership Team (LLT)

ICO and ICO Legal Service management tasks will be shared across the LLT, and delegated to the appropriate person.

Sharing and delegating management tasks allows our most experienced lawyers in the LLT to also provide legal support and oversight on the most complex and/or strategic matters, and provide supervision, coaching and mentoring to the other lawyers.

Representatives from LLT will work with colleagues on SLT Boards and other ICO groups, and actively contribute to the running of the ICO, and in particular the delivery of ICO25

(c) External lawyers

ICO Legal Service is the most time and cost-efficient way to deliver day to day legal services. There are specific circumstances when ICO Legal Service work is supplemented by external lawyers, as follows:

Secondees	Seconded lawyers come with relevant expertise. Up and running for a year. Very successful.
Counsel	Represent and advise the ICO in FOI Appeals hearings, criminal prosecution hearings, enforcement appeals and other litigation Advise on complex and/or highly strategic matters
Law firms	Only if strictly necessary. Add flexible capacity to ICO Legal Service, and provide specialist advice.

(d) Administrative staff

Sufficient expert administrative resource allows lawyers to focus on delivering legal advice, as follows:

Administrative staff	Typical tasks
GC Private secretary	Supports and coordinates the GC's work supporting the Information Commissioner and wider ICO, and overseeing the ICO Legal Service.
Practice Manager	Provides operational direction and leadership to support the delivery of timely and efficient legal services.
Legal Support Officers	Provide specialist legal administrative support to the GC or LLT.
Business Administrators/Legal Assistants	Provide business and legal administrative tasks required by ICO Legal Service

(e) Continuous development

We will ensure our lawyers remain curious and continually develop, by:

Supervision, coaching and mentoring	<p>All lawyers work with appropriate supervision, coaching and mentoring.</p> <p>This brings depth to skills in the particular field the lawyer is working in.</p>
Cross-Directorate working	<p>Lawyers will have the opportunity to work across Directorates with other Legal Directors and Principal Lawyers, to develop the breadth of their skills</p>
Internal training and external conferences	<p>Annual training programme designed by Principal Lawyer (Know-how and training)</p> <p>Covering legal skills and soft skills, and an annual away day</p> <p>Attendance at external conferences extends legal skills and our understanding of the issues facing stakeholders</p>
Regular updates	<p>ICO Legal Knowledge team will deliver daily, weekly and monthly updates to ICO Legal Service (and ICO as appropriate) on UK and global legal developments, including privileged legal analysis and case summaries</p>
External speakers, workshops with DRCF legal teams, and outward secondments	<p>Listening to and working with other information law professionals and other regulators, expands our legal skills and our understanding of the challenges faced by our stakeholders.</p>

2.2. Expansion

(a) Team numbers

We have recruited 3 new Directors (all external) and 3 new Heads of Legal (2 external and 1 internal promotion). Adding 6 senior lawyers significantly improves the impact of the ICO’s work.

We propose a further increase in lawyers from **FOIA s.31** FTE to approximately **FOIA s.31** FTE by 2025 (with a proportionate increase in administrative staff), to be delivered in phases. This is set out in a paper which will go to Resources Board in Q4 2022/23.

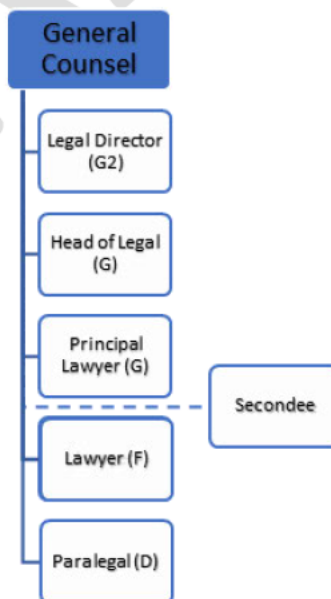


The numbers will be re-evaluated after each phase to ensure that the expansion continues to meet the ICO’s needs.

2.3. Structure of ICO Legal Service

See Appendix 3 for the organigram for the new ICO Legal Service.

Overview of structure for legal services:



Key points are:

(a) A simplified structure which allows growth

This structure allows ICO Legal Service to grow quickly by adding Principals, Lawyers and Paralegals. This is needed for us to deliver ICO25. It allows medium term growth by adding new Directorates, if needed.

It removes the extra layer of Lawyer Manager. Lawyers are line managed by a Principal Lawyer, who is line managed by a Head of Legal. This allows senior lawyers to provide legal support on its complex cases, as well as management, supervision and coaching to more junior lawyers.

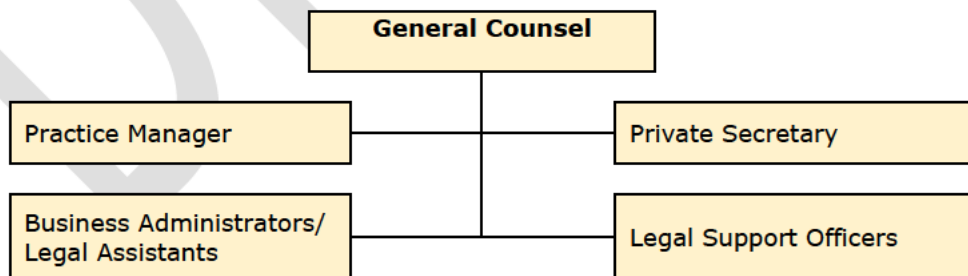
(b) The 5 Directorates and their teams

Legal Director	Teams
Enforcement and FOIA	FOIA and EIR appeals Team
	Criminal and POCA Hub
	Enforcement Hub covering DP, PECR, NIS and EIDS
Enforcement	Lawyers may be allocated to work (exclusively or part time) with PACE teams and key workstreams.
Litigation	Litigation Hub covering: <ul style="list-style-type: none"> • Appeals in the Tribunals (excluding volume FOIA appeals) • Appeals from the Tribunals to higher Courts • Judicial Reviews in the Administrative Court • Interventions (including triage and policy group) • Civil claims in the County Courts • Warrant applications Lawyers may be allocated to work (exclusively or part time) with PACE teams and key workstreams.

Legal Director	Teams
Advisory and Commercial Legal	<p>Commercial Legal Team</p> <p>covering:</p> <ul style="list-style-type: none"> • Procurement and contracts • ICO MOUs and data sharing agreements • Intellectual property • Support to DPO office and internal legal compliance
	<p>Advisory Hub</p> <p>covering all information law and other legal advice.</p>
Legal Policy and Advisory	<p>May include Principal Lawyers with a particular specialism, such as International or Technology.</p> <p>Lawyers may be allocated to work (inclusively or part time) with PACE teams and key workstreams.</p>
	<p>Legal policy Team, covering</p> <ul style="list-style-type: none"> - Statutory Guidance (information/assessment/enforcement notices and penalties) - Settlement policy - Procedural Guidance
	<p>Cyber-security Team</p>

(c) A General Counsel office

Overview of administrative support for ICO Legal Service:



Dedicated administrative support is cost effective and efficient as it frees up lawyers of every level to deliver legal advice.

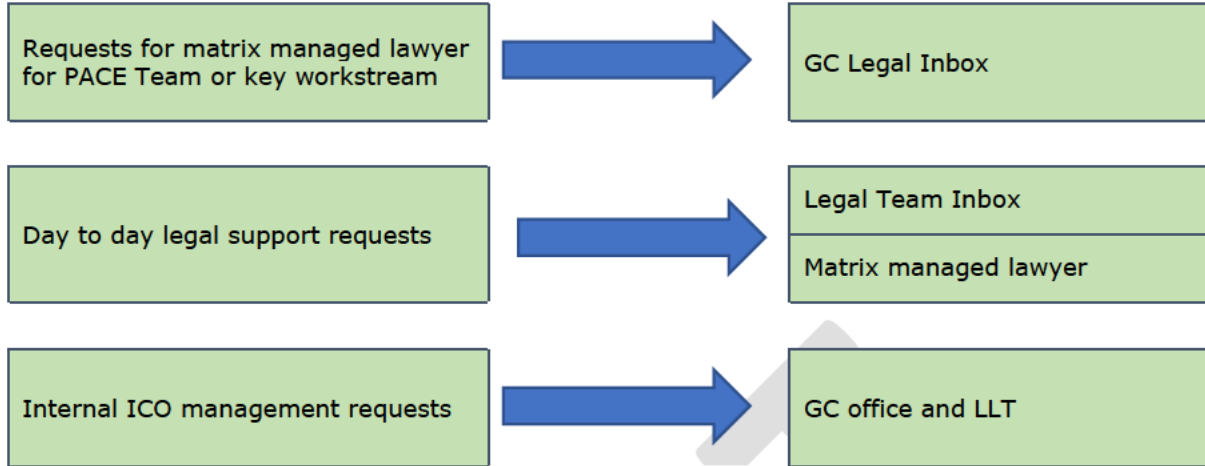
The Legal Support Officers (LSO) will be experts in legal administration. They will work as a team and assist with instructing and managing Counsel and law firms, and liaising with Courts and Tribunals.

We will apply for the role of the 2 current executive assistants to be re-graded as Legal Support Officer roles.

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3. Delivery of ICO Legal Services

(a) Requests for legal advice:

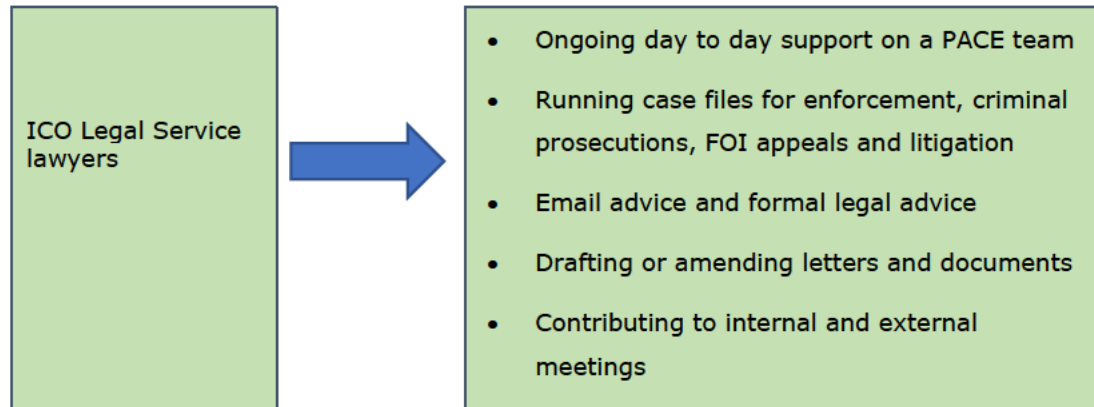


(b) Central work allocation

Requests for matrix managed lawyers and support for significant workstreams will come to the GC Legal Inbox, using a standard form.

FOIA s.31

Matrix managed lawyers will directly receive requests for legal support from their Directorate or PACE team lead. The matrix managed lawyer may deliver the advice and/or seek assistance from other lawyers.

(c) Delivery of legal advice:

Lawyers must ensure their work meets the quality standards set out in Para 4.1 below, and meets 3 key tenets:

- Meeting the targets of the ICO team they are working with, in particular in terms of meaningful outputs and alignment with ICO25. This ensures their work is focussed on **collaboration and is customer-centric**.
- When appropriate updating and/or seeking support from LLT. This ultimately ensures the GC can provide **assurance** to the Commissioner about both legal risk and quality, across the ICO.
- As an individual they are working and developing in line with **ICO25**, and seeking opportunities to broaden or deepen their experience.

4. Governance and Reporting

4.1. Quality assurance of legal services

ICO Legal Service will ensure it delivers efficient and high quality legal support as follows:

Allocation	Work is allocated to lawyer(s) with the appropriate expertise to deliver the advice needed, based on legal risk.
Matrix management	Matrix managed lawyers receive day to day task requests and feedback from the ICO Directorate or PACE team lead. Line management and supervision will remain in ICO Legal Service
Line management	ICO Legal Service line managers will focus on coaching, mentoring, learning and development (alongside general requirements).
Supervision & strategic oversight	All lawyers are responsible for ensuring they give and receive appropriate supervision and oversight. This may include: <ul style="list-style-type: none"> - from a Principal Lawyer, Head of or Director working on a matter - from strategy meetings with LLT A key part of this oversight is discussion of ICO legal risk
Feedback	LLT will review and report on ICO Legal Service performance reporting (see 4.2) Lessons learned will be reported to LLT at the end of all PACE Teams and key cases, involving Counsel when appropriate Annual review sessions with external law firms

4.2. Performance reporting

We will seek regular feedback from our ICO colleagues. For example:

Measure	KPI
Did ICO Legal Service meet your timeframes	Satisfactory or better: 100%
Did the legal advice answer your questions or did the legal support meet your needs	Satisfactory or better: 100%
Was the advice easy for you to understand	Satisfactory or better: 100%
Did the advice align with the ICO risk appetite	Satisfactory or better: 100%

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Appendix 1: Legal Risk Map

1.1. Forecasting and the ICO Legal Service Risk Map

Our Legal Risk Map took a detailed look at both the volume of work and level of legal risk in each ICO Directorate.

Based on discussions with SLT and our experiences we assigned risk levels to each Directorate (see Risk assessment methodology in the ICO Legal Service Risk Map). This was combined with an assessment of the number and type of lawyers needed to manage that risk. The outcomes are recorded in the Risk Map.

Our forecast is that we need a legal service of **FOIA s.31** FTE lawyers, plus a proportionate increase in administrative support.

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Appendix 2: ICO Legal Service current structure

- Historically we had lawyers working in 2 Legal Directorates reporting into the General Counsel. We recently recruited 3 new Legal Directors making a 5 directorate legal service. There are also lawyers working in the BCR team in the Assurance Directorate.
- Historically, one Legal Directorate provided legal support for the ICO's enforcement and criminal actions, and contentious work. This included appeals against ICO enforcement decisions (usually under DPA and PECR) and FOIA appeals, together with interventions before the courts including the Court of Appeal and Supreme Court .
- This work has been divided between the 2 Enforcement Directors and 1 Litigation Director. A new litigation directorate has been set up – the lawyers within it will be responsible for the management of active litigation before the Tribunal and Courts under the overall supervision of the Litigation Director.
- Previously, the other Legal Directorate provided legal support for data protection and other legal advice, corporate legal risk and commercial contracts. This work will be divided between the new Legal Policy and Advisory Legal Director and the Advisory and Commercial Legal Director.

See Attachment 1 for Current Organogram.

Appendix 3: ICO Legal Service proposed structure

See Attachment 2 for ICO Legal Service proposed structure

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