

Generative AI in Malta: An Assessment of Issues and Consequences Lawyers Face

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Introduction

Legal technology has become an unavoidable asset in modern professional practice, with artificial intelligence, ('AI'), at the forefront. Generative AI is one of AI's various forms which produces content such as text, summaries and predictions based on user prompts and has become increasingly prominent over recent years. A key reason for generative AI's prominence is its easy and widespread accessibility and its *prima facie* efficiency making it an attractive support tool for lawyers faced with increasing workload. Despite these advantages however, the legal profession's reliance on generative AI also introduces unique challenges in Malta which may lead to the breach of fundamental rights and the assignment of professional negligence.

The EU AI act is a significant step towards regulating AI use in professional sectors, especially where AI systems may present risks to health, safety and fundamental rights. Although there has been significant regulatory development by Regulation (EU) 2024/1689 (EU AI Act) (from here on out, it shall be referred to as 'the Act') in areas such as human oversight, transparency and AI literacy, nevertheless, there still remains considerable uncertainty surrounding the application of these rules to the legal profession specifically in terms of professional accountability. In light of this, the UK Bar Council's guidance on generative AI serves as great insight as it encapsulates some risks lawyers face when integrating such technology into their work.

This article explores three main challenges Maltese lawyers face when using generative AI: lawyer-client relationship strain, transparency and client data protection, and risks of inaccurate or misleading information. It also examines the fundamental rights that they may breach possible consequences of misuse, particularly professional negligence, before proposing recommendations to ensure that AI supports, rather than undermines, the integrity of legal practice in Malta. The analysis draws on relevant legal sources, including the EU AI Act, the General Data Protection Regulation ("GDPR"), the Code of Ethics and Conduct for Advocates, and guidance from the UK Bar Council.

Lawyer – Client Relationship Strain

The growing use of generative AI by clients prior to seeking legal advice has introduced new strains into the lawyer-client relationship. Clients increasingly arrive at consultations having already relied on AI-generated explanations, summaries, or perceived 'legal advice', often without understanding the limitations or unreliability of such tools.

This dynamic can undermine the client's trust breaking the very foundation in which the legal profession is based on. Where AI-generated information is inaccurate or misleading, lawyers are placed in the uncomfortable position of correcting assumptions formed before any professional engagement has

taken place. Explaining that such information is flawed may be perceived by clients as contradiction or conflict rather than clarification, risking a loss of confidence and a lowering of expectations.

In addition to this, this pre-reliance on AI can blur the boundaries between informal information and qualified legal advice, placing pressure on lawyers to justify their expertise against outputs that appear authoritative but lack legal interpretation, considerations and practicalities. Over time, this tension risks eroding the trust on which the lawyer–client relationship depends upon.

This places importance on AI literacy, ensuring that people have considerable knowledge about using AI and its limitations. This knowledge should enable individuals to understand, interpret and critically assess AI outputs in a manner that supports informed and responsible use. Hence, clients would be more sceptical about trusting AI immediately and place more trust on that provided by their lawyer.

Client Data Protection and Privilege

Protecting client data and ensuring transparency in the use of generative AI is one of the most critical challenges lawyers currently face. Under the GDPR and Maltese data protection law, personal data may only be processed for legitimate purposes and in a lawful and proportionate manner. Clients are entitled to be informed when their personal data is processed, including where such processing involves the use of AI tools, and retain the right to object to or restrict such use in certain circumstances.

In practice, however, lawyers may unknowingly disclose confidential client information when inputting detailed prompts into generative AI systems in an attempt to obtain more accurate or tailored outputs. Such disclosure may amount to the processing of special category data without a lawful basis, in breach of Articles 9 and 32 of the GDPR, particularly where appropriate safeguards are not in place. In tandem with this, the client’s fundamental right to data protection is breached.

Apart from data protection duties, the use of AI exposes advocates to the risk of breaching professional secrecy obligations. Lawyers are bound by strict duties of confidentiality, and the unauthorised disclosure of client information constituting a grave breach to the client’s fundamental right to professional secrecy and in turn being in breach of the Maltese Professional Secrecy Act¹. Article 3 of that Act allows for the application of criminal sanctions under Article 257 of the Maltese Criminal Code², exposing advocates to penalties ranging from fines to imprisonment of up to two years. This illustrates that the misuse of generative AI is not merely a regulatory or ethical issue, but one that may carry serious criminal consequences.

¹ Chapter 377 of the Laws of Malta

² Chapter 9 of the Laws of Malta

Reliability and Competence Risks

Generative AI remains prone to producing inaccurate or misleading content, known as “hallucinations,” where responses appear well-reasoned but are factually incorrect, irrelevant, or inconsistent with the user’s prompt. These errors often stem from outdated, biased, or incomplete training data, as well as overly broad or ambiguous queries that lead the system to generate plausible-sounding but false interpretations.

Beyond factual mistakes, AI lacks the contextual legal judgment that human lawyers possess, particularly where it is relying on user prompts with limited or fragmented information. While it can recognise text patterns, it cannot interpret case-law nuances, legal principles, or jurisdiction-specific implications, this is because such technology is a predictive tool which provides answers through mathematical calculations.

To combat this unreliability, the EU AI Act has requirements in place for high-risk AI systems to ensure the accuracy and robustness of AI systems, through Article 15. The article sustains that AI systems are to be designed and developed to achieve an “appropriate level of accuracy” which is to be consistently kept throughout the lifecycle of the technology. The “appropriate level of accuracy” and robustness is measured on a number of technical aspects that are set out in the article and other benchmarks set by authorities, providing an established method for assessment across AI developers.

Sub-article 4 of the same article focuses on errors, faults and inconsistencies AI may provide. To achieve robustness and reduce these errors, technical redundancy solutions, including backups, need to be set in place. Additionally, AI systems which continuously learn after being put into use, such as generative AI, need to be developed in a way to reduce producing biased materials and provide muted feedback loops through appropriate mitigation measures.

Despite these measures caution is still required when making use of AI, especially in the Maltese legal concept since it is such a specific sector. This is because, Malta has a small legal system where there is a significant language barrier and a limited digital case database. Hence, there is little data AI can train itself upon, further restricting accuracy and increasing the probability for hallucinations. The hallucinations may appear correct but fall entirely outside the legal or factual context of the issue at hand, creating a significant risk for lawyers who rely on its output without thorough verification.

Some systems have emerged which claim to use AI to assist judicial authorities, potentially in tasks such as conducting research and interpreting facts. These AI systems could potentially be classified as a ‘high-risk’ AI system under the Act's Annex III (8a). High-risk systems will be under more scrutiny and need to fulfil more requirements to properly function as its misuse or malfunction could produce grave consequences. Some examples of these requirements include having effective risk and quality management as well as data governance (Article 9, 17 & 10, respectively). Although these systems may

have no intended use for judicial authorities, it is still to be used in the wide scope of the legal sector greatly effecting legal research which may later result to use by judicial authorities.

Consequences when Misusing AI

The misuse of generative AI does not occur in a legal vacuum. An advocate must always ensure and provide a proper standard of work through his or her actions as explicitly provided in Rule 1 (e) of Chapter 1 of the Code of Ethics and Conduct for Advocates³. This is because the work of these professionals requires great trust and holds a large influence in society.⁴ In Malta, the minimum level of diligence that an advocate must provide is that of the *bonous pater familias* as explained in *Brannon vs Montalto*⁵. Such adequate standard of work sustained by the advocate results in the protection of the advocate's actions and the ones taken on behalf of their client.

The Code of Ethics does not specify what types of tools and materials an advocate may make use of, Hence, it is up to the lawyer to make use of any tools which he or she deems fit, however it is presumed that such tools are used competently and effectively with the aim of providing the best work for their clients and the public⁶. Therefore, ultimate responsibility of all legal work rests on the lawyer since he or she is the professional with legal expertise capable of exercising critical judgement, diligence and analyses with legal expertise in their work.

In the case where AI is misused, the advocate may provide low quality work through erroneous, biased or insufficient information or analysis. Hence, the lawyer may face extremely serious consequences. It is to note that when a professional is deemed as in breach of a misdemeanour their details are not publicly disclosed as to protect their identity and reputation⁷. To facilitate public transparency however it would be disclosed that a professional was found in breach of ethics and the type of breach. Such actions result to disciplinary actions which may greatly affect the lawyer's profession through sanctions and mandatory referrals.

An English case where which fabricated, fictitious and misinterpreted legal references were submitted by the claimant's legal representative, *R v The London Borough of Haringey*⁸, ('Ayinde') has provided extensive insight regarding professional negligence. The lawyers had denied using AI albeit such errors were too gross of nature. The presiding judge Mr Justice Ritchie declared the council's conduct as "*improper, unreasonable, and negligent*". He explained that the gross misinterpretation of statutory

³ Code of Ethics and Conduct for Advocates, Commission of the Administration of Justice [2017]

⁴ R. Farrugia, 'Enforcing Professional Legal Ethics: A Maltese Perspective' (2014) (University of Malta, Thesis) Degree of Doctor of Laws (LL.D.)

⁵ 138/2023 *Sylvana Brannon vs Roberto Montalto*, Court of Magistrates (Malta) 9th February 2026.

⁶ Ibid n4.

⁷ Ibid n4.

⁸ *R v The London Borough of Haringey* [2025] EWHC 1040 (Administrative Court)

provisions and the use of fabricated cases is careless and “*wholly improper*” resulting in “*professional misconduct*” arising from negligence.

Similarly in an American case *Mata v. Avianca, Inc.*⁹ which was cited in *Kusmin L. Amarsingh v. Frontier*¹⁰ (‘*Amarsingh*’) also dealt with fabricated information and materials submitted into court, however it was confirmed that such occurred through the use of a generative AI tool.

Both cases concluded that there is nothing inherently improper about using AI tools for assistance, but legal professionals remain responsible for verifying accuracy, the problem was that the legal professionals did not adequately check and re-evaluate the materials provided by the tool which they had used allowing such gross errors to enter the court and reputationally harming themselves, the profession and the court itself. Such negligent conduct resulted in unnecessary and wasted time and costs, attracted sanctions, and in the *Amarsingh Case*, led to a referral to the relevant attorney disciplinary authority, whilst in the *Mata Case*, the court imposed a monetary penalty. Neither of the decisions state that professional negligence claims ensued.

These types of cases are setting foundations for similar future cases making it clear that misusing AI is greatly unprofessional and may breach professional and procedural duties, including duty to the court and to act with honesty and integrity as well as the reputation of the justice system.

Apart from professional negligence, the use of AI during proceedings may raise concerns relevant to the right to a fair trial under Article 6 of the European Convention on Human Rights. However, this is not a conclusion reached in either of the *Mata* or *Amarsingh Case*; it is an analytical argument that may be explored separately from those decisions. This is because the core principles of the right being fairness, equality of arms and adversarial process may be undermined. The lack of transparency, accuracy and reliability of the technology and the possible misinformation and erroneous materials provided may result in errors during the court proceeding effecting the final judgement.

The Way Forward

To reduce the risk of inaccurate data and reports, AI should be used as an assistant rather than an autonomous task completer or advisor. This means that the advocate reviews and reassesses all of the information and analyses which AI provides through fact checking reliable sources and obtaining peer opinions. Hence AI never provides the final product but rather the materials needed. This ensures that AI bias is mitigated and any erroneous data provided is identified and corrected.

⁹ *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 448–49 (S.D.N.Y. 2023).

¹⁰ *Kusmin L. Amarsingh v. Frontier Airlines, Inc.*, 24-1391 D.C. 30-1 (D. Colo. 2026).

This safeguard is already embedded in the EU AI Act under Article 14 which sustains that high-risk AI systems must be designed in a way which there can be effective human oversight. Additionally, the developers of the AI must provide the human overseer the appropriate information regarding the AI system, the way it works, the possibility of risks and the way natural persons can intervene and stop the AI system, or otherwise disregard, override, or reverse its output where needed.

For advocates to be equipped with the necessary skills for efficient use of AI and review, obligatory training should be provided to every professional working in the legal sector. This is to ensure AI literacy among legal professionals by providing them opportunities to gain prompt and analytical skills suitable for using AI resulting in a lower risk of AI misuse and any data breaches. Providers and deployers handling or using the AI system are under the obligation through Article 4 of the Act to provide AI literacy training to employees about the AI system.

To safeguard the professionalism of the work of the lawyer, any work produced by or with the aid of AI must be disclosed to the client. In fact, Article 50(4) of the Act sets such notification as a requirement for users of AI systems that generate or manipulate image, audio, or video constituting a deep fake, or generate or manipulate text material published with the purpose of informing the public on matters of public interest. In addition to this, the lawyer should also obtain the client's consent beforehand to use their data and specify the reasons for which AI would be used. This ensures that there is complete transparency between the lawyer and the client, strengthening the trust between them.

The effectiveness of these recommended procedures rests with functional and established internal policies of law firms. These policies are to clearly explain which AI tools may be used within the firm and the methods and type of work in which they can be used in. Additionally, such policies are to be constantly reviewed and updated to prevent them from becoming outdated with the growing technology ensuring that local ethical and security standards are met.

Conclusion

Ultimately, the challenges posed by generative AI do not stem from the technology itself, but from how it is deployed within legal practice. The EU and Maltese legal framework already provide robust foundations through data protection law, professional secrecy obligations, duties on AI providers and deployers, and ethical duties governing advocates. These policies should foster ethical standards which enhance confidence in the legal profession. However, the rapid integration of generative AI exposes gaps in practical guidance, right infringements and internal governance due to becoming quickly outdated, increasing the risk of misuse.

Addressing these challenges therefore requires a shift from reactive enforcement to proactive compliance, where lawyers consciously embed transparency, verification, and accountability into their

everyday use of AI. Hence, both the legislators as well as lawyers must make an effort in understanding AI, its use and its limits.

On raising awareness of AI as a powerful but fallible tool, rather than a substitute for professional judgment, the legal profession can harness innovation while preserving its core values of trust, competence, and integrity. Without clear professional discipline and responsible integration, generative AI risks becoming a liability aiding in the breach of fundamental rights rather than an asset to the Maltese legal profession.

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