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3 August 2026

deighton pierce glynn

Florence Eshalomi MP
Minister of State for Local Government and Homelessness
2 Marsham Street
London
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By email to: Ministerial.Correspondence@communities.gov.uk

Dear Ms Eshalomi

Divestment from companies involved in breaches of International Humanitarian Law

1. We continue to represent our client Palestine Solidarity Campaign, (**"PSC"**). We refer to our letters of 28 August, 11 September 2025 and refer to the letter of your predecessor, Alison McGovern MP (**"the previous Minister"**), dated 28 October 2025, our further letter dated 27 November 2025 and the previous Minister's letter dated 2 March 2026.

2. You have failed to engage substantively with any of the points we have raised in our correspondence. However, we note that the previous Minister addressed the Local Government Pension Scheme Advisory Board (**"the SAB"**) by a letter dated 12 May 2026. In that letter, she stated that,

   'The Government's position is clear: decisions on boycotts, divestment and sanctions are matters of UK foreign policy and are for central government, not local authorities. It is therefore not appropriate for local authorities to adopt investment policies that go beyond or differ from UK Government sanctions or foreign policy positions.

   This does not prevent authorities from setting or changing investment strategies for other reasons, particularly where required to meet their fiduciary duties to scheme members. Authorities must continue to act in line with the law and relevant guidance.'

3. For the reasons set out below, PSC considers that those statements are unlawful, or alternatively materially misleading, if they are intended or liable to be understood as guidance, direction, instruction, or an authoritative statement of the legal constraints applicable to LGPS administering authorities.

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4. At the outset, we would remind you of your stated position in this context, including comments made in the House of Commons on Thursday 5 February 2026. In particular, we refer to your statement that:

   '*genocide is not something we can recognise only when it is politically convenient; we must call it out, without fear or favour, whenever and wherever it is occurring. <u>What we are seeing in plain sight in Gaza meets the definition of genocide</u>*.'

5. Further, we refer to your comment in the same debate that as "*a signatory to the genocide convention, <u>we have a legal obligation to call out and prevent genocide</u>, as do the other 153 states that ratified the treaty. For the treaty to be effective, and for us to stop not just this but future genocides, we must speak with one voice."* We invite you to keep in mind these strongly articulated positions and beliefs when considering this letter and all future correspondence on this matter.

Status of Your Statements

6. We consider that your predecessor's statements do not have binding legal force merely because they were made by a Minister of State.

7. As you must recognise, LGPS administering authorities are statutory decision-makers. They must exercise their own investment functions under the LGPS statutory framework, in accordance with the LGPS regulations, lawful statutory guidance, public law principles, and their fiduciary or quasi-fiduciary duties to scheme members and beneficiaries.

8. They are not required to follow an informal ministerial statement of policy preference. Nor may they treat such a statement as overriding their own statutory investment discretion.

9. Accordingly:

   a. if the previous Minister's statements are no more than a political statement of Government preference, they are not binding on administering authorities;

   b. if they are intended to operate as statutory guidance, a direction, or an authoritative statement of the legal position, they must be issued under and within the scope of a valid statutory power; and

   c. if they purport to prohibit or discourage administering authorities from adopting otherwise lawful investment policies because those policies go beyond or differ from UK Government sanctions or foreign policy, they are unlawful.

The Supreme Court's Decision in Palestine Solidarity Campaign

10. The Supreme Court's decision in R (Palestine Solidarity Campaign Ltd) v Secretary of State for Housing, Communities and Local Government [2020] UKSC 16 remains central.

11. In that case, the Court considered LGPS investment guidance which stated, in substance, that administering authorities should not pursue boycotts, divestment or sanctions against foreign nations or UK defence industries except where formal legal sanctions, embargoes or restrictions had been imposed by Government and should not pursue policies contrary to UK foreign or defence policy.

12. The Supreme Court held, by majority, that the Secretary of State had exceeded the power conferred under the relevant LGPS statutory framework. The statutory power concerned the administration, management and investment strategy of the LGPS. It did not authorise the Secretary of State to impose a substantive foreign-policy-based restriction on LGPS investment decisions.

13. The Court's reasoning was that a Minister may not, without clear statutory authority, use the LGPS pensions framework to impose a foreign-policy conformity rule on administering authorities.

14. Your predecessor's statement appears to reproduce the substance of the unlawful restriction considered in that case. Stating that it is "*not appropriate*" for administering authorities to adopt investment policies that go beyond or differ from UK Government sanctions or foreign policy is materially similar to saying that they should not pursue policies contrary to UK foreign policy and the change of language does not cure the legal defect.

Alignment with Government Foreign Policy not required under the law

15. There is no legal requirement for administering authorities to align investment policies with UK Government foreign policy. Rather, PSC agrees that administering authorities must act in accordance with ("*in line with*") the law and relevant lawful guidance, where "*the law*" includes:

    a. the Supreme Court's decision in the Palestine Solidarity Campaign decision;

    b. the statutory investment functions of LGPS administering authorities;

    c. fiduciary or quasi-fiduciary duties owed in respect of pension fund assets;

    d. public law duties, including duties to take account of legally relevant considerations, disregard irrelevant considerations, and make sufficient inquiries;

    e. the current LGPS investment guidance, insofar as it is lawful;

    f. the UK's international law obligations, where relevant to the exercise of public functions; and

    g. the rule of law principle that Ministers and public authorities must act consistently with domestic and international law.

16. It is however important to highlight that as explained below at paragraph 21, the obligations of administering authorities in relation to investment policies do in fact align with the Government's <u>stated</u> foreign policy positions.

17. Nevertheless, the phrase "*in line with the law*" cannot be used as shorthand for "*in line with Government foreign policy*". Government foreign policy is not itself a legal prohibition on LGPS investment decision-making. Nor is the absence of UK sanctions a legal answer to whether continued investment in particular companies is lawful, prudent, or consistent with an administering authority's duties.

PSC's Position Paper and the Relevant Legal Context

18. As you will be aware PSC has provided a detailed position paper dated 27 August 2025, entitled "*Local Government Pension Scheme Investments in Companies Involved in the Occupied Palestinian Territory and Israel's Military Offensive in the Gaza Strip*". That document was sent to the previous Minister under cover of our letter dated 28 August 2025.

19. That paper sets out PSC's legal analysis of the consequences, under international and domestic law, of LGPS investments in companies involved in Israel's violations of international law in the occupied Palestinian territory and Gaza.

20. In summary, the position paper sets out that:

    a. Israel is committing serious violations of international law in the occupied Palestinian territory, including in relation to settlements, annexation, transfer of population, forcible transfer, destruction and appropriation of property, racial discrimination, apartheid, and denial of the Palestinian people's right to self-determination;

    b. Israel's military offensive in Gaza gives rise to serious violations of international humanitarian law and, at the very least, a serious risk of genocide;

    c. the UK owes international law duties of non-recognition, non-assistance, cooperation, ensuring respect for the Geneva Conventions, and prevention of genocide;

    d. those duties are relevant to UK public authorities, including the Secretary of State and LGPS administering authorities;

    e. LGPS administering authorities are organs of the State for the purposes of international law attribution;

    f. administering authorities must exercise due diligence in respect of investments in companies which aid or assist Israel's serious breaches of international law;

    g. administering authorities should refrain from making new investments in such companies and take reasonable steps towards divestment from existing holdings where appropriate; and

    h. the Secretary of State should issue guidance giving effect to the UK's prevention and non-assistance duties.

21. Whether or not the Department agrees with every conclusion in the position paper, it is plainly a legally relevant analysis. It cannot lawfully be dismissed by stating that boycotts, divestment and sanctions are matters of foreign policy for central Government.

22. The position paper demonstrates that LGPS investment decisions may raise questions of legal compliance, public law duty, fiduciary duty, ESG risk, international law, complicity, due diligence, financial risk, reputational risk, and the rule of law. Those are not displaced by the Government's foreign policy preferences.

23. It is important to highlight that the obligations of administering authorities, as set out in the position paper, are in fact consistent with the Government's own stated foreign policy positions, despite the fact its actions run contrary to them. This includes the UK Government clearly stating that *inter-alia*:

    a. The establishment of settlements is illegal and constitutes a flagrant violation under international law;

    b. Businesses should not engage in economic and financial activities in Israeli settlements or those which directly benefit them;

    c. Businesses should be aware of the clear evidence of possible human rights abuses associated with Israeli settlements and the risk of involving themselves in Israel's serious breaches of international law;

    d. Those engaging in business activity in illegal settlements, and who are financing and enabling settler attacks against Palestinians, may face sanctions; and

    e. Israel's actions in Gaza have created a real risk of serious violations of international humanitarian law.

24. We would add that the arguments proposed in the Position Paper apply more generally; to LGPS investments in any companies involved in violations of international law in any country.

Consideration of Divestment – 'In Line with the Law'

25. Your predecessor's statement appears to treat UK Government sanctions and foreign policy as a ceiling beyond which administering authorities should not go. That is legally wrong.

26. The absence of UK sanctions does not mean that continued investment is lawful, prudent, or consistent with an authority's duties. Nor does it mean that an administering authority is prohibited from taking a more restrictive investment position where that is justified under the LGPS legal framework.

27. On PSC's analysis, in certain circumstances the law may require administering authorities to consider whether continued investment in particular companies:

a. assists in maintaining an unlawful situation created by serious breaches of peremptory norms of international law;

b. contributes to violations of international humanitarian law;

c. creates a foreseeable risk of assisting conduct relevant to genocide prevention duties;

d. exposes the fund to legal, financial, regulatory, reputational, or ESG risk;

e. is inconsistent with the authority's fiduciary or quasi-fiduciary responsibilities; or

f. requires engagement, exclusion, or divestment following proper due diligence.

28. A ministerial statement that discourages administering authorities from considering those matters, on the basis that they go beyond Government sanctions or foreign policy, is liable to cause unlawful decision-making.

29. PSC notes your further statement that authorities are not prevented from setting or changing investment strategies "*for other reasons, particularly where required to meet their fiduciary duties to scheme members*".

30. That qualification does not cure the unlawfulness identified.

31. First, it does not identify any statutory authority permitting the Department to impose, or even to recommend as a legal norm, a foreign-policy conformity rule on LGPS investment decisions.

32. Secondly, it appears to suggest that administering authorities may depart from Government foreign policy only where the investment decision can be justified by "*other reasons*", particularly where required by fiduciary duty. That formulation is too narrow.

33. Administering authorities may be entitled, and in some circumstances required, to consider ESG factors, human rights risk, international law risk, financial risk, legal risk, member views, and non-financial considerations. A policy need not be "*required*" by fiduciary duty in the narrow sense before it can lawfully be adopted.

34. Thirdly, the reference to acting "*in line with the law and relevant guidance*" cannot validate an unlawful or misleading ministerial statement. Only lawful guidance can bind administering authorities. A ministerial communication cannot become binding guidance unless it is issued under, and within the scope of, a valid statutory power.

35. Fourthly, the current LGPS guidance does not prohibit administering authorities from refraining from investing in, or divesting from, companies involved in serious violations of international law. Nor does it make Government foreign policy alignment the test of lawfulness.

Administering Authorities' Obligations

36. The proper legal question is not whether an LGPS investment policy goes beyond or differs from UK Government foreign policy.

37. The proper questions include whether the administering authority:

    a. is acting for proper pension investment purposes;

    b. has taken proper advice;

    c. has assessed financial risk, diversification, suitability, and long-term investment performance;

    d. has considered financially material ESG factors;

    e. has lawfully considered any non-financial factors;

    f. has taken account of relevant legal risks, including international law and human rights risks where material;

    g. has made sufficient inquiries;

    h. has considered the views and interests of scheme members and employers as required;

    i. has complied with the LGPS regulations and lawful guidance; and

    j. has acted rationally and consistently with public law principles.

38. The previous Minister's statement risks substituting a different and unlawful test: whether the proposed policy aligns with UK Government foreign policy.

Risk of unlawful decision making caused by the Minister's statements

39. The context in which your predecessor's statement was made is important. It was addressed to the Scheme Advisory Board and is therefore liable to be understood by administering authorities as an authoritative ministerial steer on how they should exercise their statutory functions.

40. There is a real risk that administering authorities will treat the statement as meaning that they must not adopt divestment policies concerning companies involved in Israel's violations of international law unless and until the UK Government imposes sanctions.

41. That would be a serious misdirection. It would discourage authorities from considering matters which may be legally relevant, including the matters identified in PSC's position paper.

42. It would also risk undermining the duty of administering authorities to exercise their own judgment, rather than treating Government foreign policy as determinative.

Identification of Statutory Power

43. If the Department contends that there is now a statutory power authorising the Minister to impose, recommend, or communicate a foreign-policy-based restriction on LGPS investment decisions, please identify:

    a. the precise statutory provision relied upon;

    b. whether your statements are said to constitute statutory guidance;

    c. whether the statements are said to be directions;

    d. whether administering authorities are legally required to follow them;

    e. the consequences said to follow if an administering authority adopts an investment policy that goes beyond or differs from UK Government sanctions or foreign policy;

    f. whether the Department has considered the Supreme Court's decision in Palestine Solidarity Campaign;

    g. whether the Department has considered PSC's position paper dated 27 August 2025; and

    h. whether the Department has considered the UK's prevention and non-assistance duties under international law.

44. If no such statutory power is relied upon, the Department should confirm that the statements are non-binding and do not constrain administering authorities' statutory investment discretion.

Required Clarification

45. PSC requests that you confirm, in writing, that:

    a. the statements made by your predecessor do not impose any legal obligation on administering authorities to align their investment policies with UK Government sanctions or foreign policy positions;

    b. administering authorities are not prohibited from adopting investment policies which go beyond or differ from UK Government foreign policy, provided they act in accordance with the LGPS legislation, lawful guidance, public law principles, and their duties to scheme members and beneficiaries;

    c. divergence from UK Government foreign policy is not, of itself, a legal bar to an LGPS investment decision;

d. authorities remain entitled, and where appropriate required, to consider legal risk, ESG risk, human rights considerations, international law considerations, and the matters identified in PSC's position paper;

e. the statements are not intended to reintroduce the substance of the guidance held unlawful by the Supreme Court in Palestine Solidarity Campaign; and

f. the Department will communicate this clarification to the Scheme Advisory Board.

Requested Withdrawal or Correction

46. PSC invites you to withdraw or correct the impugned statements within 14 days.

47. In particular, the Department must issue a written clarification confirming that the requirement to act "*in line with the law*" means compliance with the LGPS statutory framework, lawful guidance, fiduciary or quasi-fiduciary duties, public law principles, and relevant legal duties, including relevant international law considerations and does not mean alignment with UK Government foreign policy as a substitute for those duties.

48. PSC reserves all rights, including the right to challenge the statements, and any related policy, guidance, direction or decision, by way of judicial review.

49. Please address correspondence in response to this letter to [redacted] and [redacted]

Yours faithfully

Deighton Pierce Glynn

DEIGHTON PIERCE GLYNN
Encl.