Cllr Roger Phillips OBE
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Dear Roger

LGPS Advisory Board – Investment in conflict zones

As you may recall from previous correspondence, UK Lawyers for Israel (UKLFI) is an association of lawyers who seek to ensure the correct understanding and application of laws in matters relating to Israel.

We have noted your statement of 15 May 2026 regarding the "position paper" provided by the Palestine Solidarity Campaign (PSC) and the failure of the UK government to provide the assistance which you requested.

We wish to make clear that the views expressed in that "position paper" are strongly disputed.

In the first place, the lead author of the paper, Max Du Plessis SC, has been representing South Africa in its genocide claim against Israel in the International Court of Justice and the paper was prepared for the PSC, which is an activist organisation. This may explain why it is called a "position paper". It should not be assumed that it is an impartial opinion.

Secondly, its conclusions are premised on the assumptions that holding or purchasing shares in established companies assists particular customers of those companies to carry out alleged crimes or violations of international law with their products; and that disposing of shares in such companies would prevent those alleged crimes or violations.

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There is no foundation for these assumptions. Holding or purchasing shares in an established company does not assist any of its customers to carry out alleged violations using its products. Divesting shares in an established company does not stop any of its activities, still less any activities of its customers - it just results in the transfer of shares and investment gains to other investors who are less concerned about those activities.

Thirdly, the UK has a "dualist" constitution under which public international law does not form part of UK domestic laws unless it is incorporated by UK legislation or by some other source of UK domestic law: there has to be a "domestic foothold". The leading authorities are conveniently summarised in *R (on the application of Al-Haq) v Secretary of State for Business and Trade* [2025] EWHC 1615 at paras. 68-106, which contradict various misinterpretations of that and various other cases in the "position paper".

As you are aware, the fiduciary duties of those responsible for the investment of LGPS funds under UK laws are well-established:

- they must seek to maximise the return on investment consistently with prudence;
- they must take into account all factors that affect the financial return; and
- they may take other (non-financial) factors into account only if two conditions are both satisfied:
  (1) they have good reason to think that scheme members would share the concern; and
  (2) the decision does not involve a risk of significant financial detriment to the fund.

These conditions were set out in the Law Commission's Report on Fiduciary Duties of Investment Intermediaries (particularly at paragraph 6.34) and have been endorsed in the UK Supreme Court in *R (Palestine Solidarity Campaign) v Secretary of State* [2020] UKSC 16. Their application to the investment of LGPS funds has been affirmed and elucidated in legal opinions of Nigel Giffin KC, and is further discussed in a significant published article by Dan Harris.

The application of these conditions is also mandated by the existing Government Guidance on Preparing and Maintaining an Investment Strategy Statement, which administering authorities are required to apply in accordance with Regulation 7 of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016. The Government has stated that the new guidance to be adopted under the Pension Schemes Act 2026 will restate the existing position: see written Parliamentary answers nos. HL16400, HL16401 and HL16402.

Thus the position under UK law is clear: international law must be taken into account by those responsible for investing LGPS funds as a financial consideration if and to the extent that it may affect financial return. Otherwise, it may only be taken into account if the two tests mentioned above are both met. There is no domestic foothold for taking it into account in other circumstances and doing so would conflict with both established UK common law and the statutory regime governing the LGPS.

The PSC's "position paper" makes numerous other allegations and arguments that are strongly disputed, but also irrelevant in view of the points made above. We are intending to prepare a more detailed analysis of the above points and a commentary on various other problematic aspects of the paper, but we hope that the above summary is of assistance to you and your colleagues in the meanwhile.

Please do not hesitate to contact us if we may be able to assist you further in these matters.

Yours sincerely

Jonathan Turner
Chief Executive