



**Lawyers for Palestinian Human Rights' response to the
Government consultation “Updating the Revised Best Value
Statutory Guidance”**

March 2017



About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a legal charity in the UK that works on projects to protect and promote Palestinian human rights. Our trustees include leading human rights lawyers Sir Geoffrey Bindman QC and Michael Mansfield QC.

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Introduction

1. This is a response to the 13 February 2017 consultation document published by the Department for Communities and Local Government entitled: “Updating the Revised Best Value Statutory Guidance: Consultation on an addition to the Revised Best Value Statutory Guidance.” The consultation asks whether the following proposed additional paragraph to the Revised Best Value Statutory Guidance (the 'Guidance') is “clear and specific”:

“[A]uthorities should not implement or pursue boycotts other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government.”

2. LPHR considers there is a substantial risk that the proposed paragraph is not sufficiently clear and specific. This is principally because it omits reference to existing and important legal powers provided to a local authority under UK legislation to exclude a company from its procurement procedure in certain circumstances.

Clarify relationship to the UK Public Contract Regulations 2015

3. Local authorities have existing legal powers under the UK Public Contract Regulations (the 'PC Regulations') to exclude a company from their procurement procedure on the basis of, for example, documented involvement in serious violations of international law and/or human rights.
4. There is no indication in the consultation document or the proposed additional paragraph that the new guidance amends or supersedes the PC Regulations.
5. However, this should be explicitly clarified in the proposed additional paragraph, so as to assure local authorities, and the wider public, that the updated guidance does not interfere with these existing statutory powers.

Clarify relationship to the UN Guiding Principles on Business and Human Rights and the UK National Action Plan on Business and Human Rights

6. It is also important to recall, in the context of the proposed additional paragraph, that local authorities are required to comply with the UN Guiding Principles on Business and Human Rights (the 'UNGPs'). The UK government demonstrated its commitment to the UNGPs when, in September 2013, it published its National Action Plan on Business and Human Rights (the 'UK National Action Plan'). Local authorities, as organs of state under international law, share the same responsibilities as central government to respect human rights under the UNGPs, and consequently to implementing the UK National Action Plan.



7. The UN Human Rights Council Advisory Committee has also stated: *“Local authorities are obliged to comply, within their local competencies, with their duties stemming from the international human rights obligations of the State. Local authorities are actually those who are to translate national human rights strategies and policies into practical applications.”*¹ This excerpt is particularly relevant to local authorities' role in implementing the UNGPs through observing the UK's National Action Plan.
8. A vital method through which a local authority can put into effect their responsibilities to respect human rights under the UNGPs and the UK National Action Plan is by exercising their statutory powers under the PC Regulations to exclude a company from its procurement procedure, on a case-by-case basis.
9. The extent to which, if at all, the proposed additional paragraph in the consultation document might restrict or prevent these statutory powers from being exercised by local authorities, and therefore impede their adherence to the UNGPs and UK National Action Plan, should be made explicit so as to give necessary clarity to local authorities.

Proposed added wording to the consultation additional paragraph

10. Given the above, we suggest adding the following two clarifying sentences to the proposed additional paragraph: *“This does not affect contracting authorities from lawfully (under the Public Contract Regulations 2015) excluding a company, on a case by case basis, from its procurement procedure on the grounds of grave professional misconduct or having violated obligations set out in national, EU, and international environmental, social and labour laws. It also does not affect local authorities' ability to implement the United Nations Guiding Principles on Business and Human Rights.”*

Conclusion

11. LPHR considers that without the above clarification, the proposed additional paragraph is ambiguous and will create a real risk of causing very unhelpful confusion regarding the continuing ability of local authorities to lawfully exclude a company due to involvement in serious transgressions and/or to adhere to its business and human rights responsibilities. We accordingly strongly suggest the adoption of wording as proposed in the preceding section.

Tareq Shourou, Claire Jeffery

¹ The United Nations Human Rights Council Advisory Committee report on “the role of local government in the protection and promotion of human rights”, dated 7 August 2015, is available at: http://webcache.googleusercontent.com/search?q=cache:xT2u2_-3gusJ:www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_49_ENG.docx+&cd=2&hl=en&ct=clnk&gl=uk