

28 August 2025

**RE: Teesside Pension Fund**

**By email to: [john\\_kabuye@middlesbrough.gov.uk](mailto:john_kabuye@middlesbrough.gov.uk)**

Dear Councillor John Kabuye

**Divestment from companies involved in breaches of International Humanitarian Law.**

Introduction

1. We are Palestine Solidarity Campaign (**'PSC'**), the largest organisation in Britain dedicated to campaigning in solidarity with the Palestinian struggle for freedom, justice and equality. We campaign for an end to Israel's settler-colonialism, occupation and apartheid in Palestine and for peace and justice for everyone living in the region.
2. Our work in support of securing human rights for Palestinians applies more broadly; the points of principle we rely on require you to refrain from making any new investments and to divest from any companies in your investment portfolio which are aiding or assisting in serious breaches of international law. This divestment duty applies to the situation in the Occupied Palestinian Territory (**'the OPT'**) but is not limited to that context.

Overview

3. We are concerned with what we consider to be the unlawful use of the Local Government Pension Scheme (**'LGPS'**) as a vehicle through which the UK invests in companies involved in aiding or assisting in the commission of serious breaches of international law (**'Involved Companies'**). Although our concern has arisen in the context of Israel's serious violations of international law in the OPT we would again emphasise that the legal issues identified will be relevant to other territories involving serious violations of international law by Involved Companies.
4. In view of our concerns, we have instructed specialist counsel to prepare a Position Paper (**'the Position Paper'**) which is a detailed document which sets out the legal consequences under international and domestic law in respect of LGPS investments in companies which are aiding or assisting in the commission of violations of international law in the OPT. That document is **attached**.

Your domestic legal obligations informed by international law

5. The Position Paper sets out in detail the violations of international law by Israel by reason of its actions in the OPT. There are set out powerful legal reasons why you must take account of international law obligations when making any decisions relating to investments that concern proposed or actual investments in Involved Companies. In particular: -
6. The UK owes a number of '**prevention and non-assistance duties**' under international law, which include:
  - 7.1 An obligation not to aid or render assistance to Israel to maintaining situations created by Israel's serious breaches of peremptory norms, and
  - 7.2 An obligation to take all reasonably available measures to bring to an end Israel's violations of peremptory norms, ensure respect of the Geneva Conventions, and prevent genocide.
7. That position was authoritatively stated by the ICJ in its Advisory Opinion of 19 July 2024.
8. The prevention and non-assistance duties apply to the UK's investment relations with Israel and LGPS investment in companies which aid or assist in the commission of Israel's serious breaches of peremptory norms of international law, which may foreseeably assist in the commission of genocide and violations of the Geneva Conventions (i.e. the Involved Companies).
9. Under the LGPS, responsibilities are divided between the Secretary of State for Housing, Communities and Local Government and local administering authorities. Both are organs of the State whose acts and omissions are attributable to the UK under the Articles of Responsibility of States for Internationally Wrongful Acts 2001. The UK's duties under international law are relevant and apply to the acts and omissions of local government, not just central government.
10. If your acts and omissions are incompatible with the prevention and non-assistance duties, they will trigger the UK's responsibility under international law. The prevention and non-assistance duties require action by the Secretary of State and the administering authorities.
11. It is therefore clear that:-
  - 11.1 LGPS administering authorities must refrain from making new investments in companies which aid or assist in the commission of serious breaches of peremptory norms of international law, and/or which may foreseeably assist in the commission of genocide and violations of the Geneva Conventions via Involved Companies. If an administering authority knowingly makes new investments in Involved Companies, that would be unlawful under international law.
  - 11.2 Where pre-existing investments are concerned, administering authorities must take reasonable steps towards divesting from such companies. At all times, investors must exercise due diligence.

12. If LGPS investment decisions are made which are incompatible with the prevention and non-assistance duties, it will trigger the UK's responsibility under international law.
13. Our research indicates that LGPS funds collectively invest £12.2 billion in companies which contribute to violations of international law in Palestine. That includes substantial investments in companies which are involved in the supply of technology, surveillance equipment and weapons to the Israeli military, and the construction and financing of settlements in the West Bank.
14. Such companies have the strongest nexus to Israel's violations of international law in the OPT and should be divested from as a matter of priority. That is also the case for any company in any territory concerned with a breach of international law.
15. There is already a strong emerging trend towards divestment. As far as PSC is aware, 17 local councils have now supported divestment from Involved Companies. On 24 March 2025, Oxford City Council passed by a unanimous vote, which calls on the Oxfordshire Pension Fund to divest from entities complicit in violations of human rights and international law in Palestine, that reflects, at least in that local authority, support for an international law compliant approach to investment. Further, on 26 August 2025 Norway's wealth fund decided to divest from US construction equipment group Caterpillar and five Israeli banking groups "due to an unacceptable risk that the companies contribute to serious violations of the rights of individuals in situations of war and conflict".
16. It is implicit in regulation 7(2)(e) of the 2016 Regulations that administering authorities can take into account ESG considerations in selecting, retaining and realising investments, and can include such a requirement in their investment strategies. Indeed, the LGPS Guidance provides that administering authorities should consider "non-financial factors" where they are relevant to the "critical test" of suitability and/or are "financially material to the performance of their investments", and that "purely non-financial considerations" can also be taken into account (pp 6, 8-9). That is also the effect of the Supreme Court's decision in *R (on the application of Palestine Solidarity Campaign Ltd and another) v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16.
17. The extent to which administering authorities can take into account non-financial factors and forgo financial return to generate social impact is subject to two constraints. As described by the Law Commission, those are:
  - "(1) trustees should have good reason to think that scheme members would share the concern; and
  - (2) the decision should not involve a risk of significant financial detriment to the fund."
18. While the level of detriment to the local pension fund and the support of members would have to be assessed on a fund-by-fund basis, a number of general propositions can be made:
  - 17.1 The "tie-break" principle, whereby non-financial considerations can only be used to decide between two equally beneficial choices, does not reflect the law. As the Law Commission has explained: "The requirement is that trustees should not incur

the risk of significant financial detriment to the scheme, not that they should avoid theoretical detriment according to a precise mathematical model”.

- 17.2 What constitutes a risk of significant financial detriment is a “question of degree”. It implies a qualitative threshold that must be assessed with regard to the likelihood and magnitude of the financial risk, relative to the size, value and health of the pension fund.
- 17.3 It is permissible to knowingly forgo financial return beneath that threshold. The amount of financial return that can be forgone for non-financial reasons can be substantial.
- 17.4 It is therefore our position that there is a very clear legal basis on which you can and indeed must divest from Involved Companies and set an investment strategy which refrains from such investments.
19. You are put on notice of your legal obligations to divest from Involved Companies as set out in the Position Paper. The urgency of the matters outlined in the Position Paper require you to address these issues at the next Pensions Committee meeting.
20. We require a written response from you in the next 21 days setting out any reason why you disagree with our analysis and confirmation that you have sent this letter and the Position Paper to all the relevant decision makers at your Authority.

Yours faithfully

**PALESTINE SOLIDARITY CAMPAIGN**

Encl.