

PENSIONS COMMITTEE**23 FEBRUARY 2022**

REPORT TITLE:	MERSEYSIDE PENSION FUND'S RESPONSIBLE INVESTMENT POLICY AND HUMAN RIGHTS
REPORT OF:	DIRECTOR OF PENSIONS

REPORT SUMMARY

This report recommends the action that could be taken in response to concerns expressed to the Committee about the Pension Fund's investment in companies that are alleged to be facilitating the construction and continued existence of Israeli settlements in the Occupied Territories of Palestine (OPT).

Appendix 1 to this report contains exempt information. This is by virtue of paragraph(s) 3 of Part 1 of Schedule 12A of Local Government Act 1972 i.e. information relating to the financial or business affairs of any particular person (including the authority holding that information).

RECOMMENDATION/S

The Pensions Committee is recommended to consider the report and request the Director of Pensions to take the following action;

(1) seek to engage directly with the nine companies in which the Pension Fund has invested and which appear on the United Nations database as carrying on commercial activities which facilitate the construction and maintenance of Israeli settlements in the Occupied Palestinian Territories;

(2) In particular the nine companies should be requested to respond to the allegations that they are supporting the Israeli settlements in the ways alleged in the UN database and given 60 days to respond;

(3) the Director of Pensions should consider notifying the nine companies that the Pension Fund may draw adverse inferences from any failure on their part to respond in a satisfactory fashion to the request for information including discontinuance of its investments in the companies;

(4) the Director of Pensions be requested to report to a future meeting of the Committee the outcome of his attempts to engage with the nine companies including any assurances that

he may have received that they do not, or will not, carry out the business activities alleged against them in the UN database or any reasons advanced by the companies that seek to justify those activities;

(5) the Director of Pensions be requested to continue his attempts to gather reliable evidence from reputable sources of the nature and extent of the nine companies' alleged involvement in economic activities that support the Israeli settlements;

(6) the Director of Pensions be requested to continue working with LAPFF and the Fund's advisers in the engagement with investee companies that may be involved in facilitating breaches of international law or of human rights in parts of the world other than the OPT including supporting the settlement of colonists in occupied territories which have been seized by military force

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The recommendations are a fair, reasonable and proportionate response to the legitimate concerns expressed to the Committee about the Fund's investment in companies which allegedly facilitate the construction and maintenance of Israeli settlements in Palestine which are generally regarded to be illegal in international law by virtue of the 4th Geneva Convention and the Hague Regulations 1907.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Director of Pensions considered whether it would be reasonable for the Pension Fund to cease to invest in the nine companies on the United Nations (UN) database without first attempting to engage directly with them. He rejected that option for the following reasons:
- 2.2 The database was compiled between 1st January 2018 and 1st August 2019 and may therefore be out of date;
- 2.3 The UN has admitted that the database was not compiled as a result of any judicial process in that the facts alleged against the companies and the evidence in support of its findings have not been disclosed nor have any replies to the allegations made to the UN by the companies on the List been disclosed by the UN;
- 2.4 The law of England is that justice must not only be done but also manifestly be seen to be done;
- 2.5 The database should therefore be regarded as a starting point for further enquiries not an end point and the nine companies should be given a reasonable opportunity to engage directly with the Fund and to answer the allegations made against them by the UN in accordance with the rules of natural justice.

3.0 BACKGROUND INFORMATION

- 3.1 At Pensions Committee in November 2021, a Member question was asked regarding the application of the Responsible Investment (|RI) policies agreed by Merseyside Pension Fund (MPF) and Northern LGPS (NLGPS) to the Fund's investments in companies trading in the Occupied Palestinian Territories (OPT) and it was agreed that a report on the matter would be brought to the next meeting of Pensions Committee.
- 3.2 The question was as follows:

Regarding investments on companies trading in the Occupied Palestinian Territories

Given that there has been:

1. Questions, motions and protests by members of Merseyside Pension Fund and the wider public, attached
2. Two consecutive and [critical engagement reports](#) by Local Authority Pension Fund Forum, attached
3. Advice and [reports from the United Nations Special Rapporteur](#) on the situation in the Occupied Palestinian Territories
4. [Government advice](#) on high risk of trade with Occupied Palestinian Territories
5. [Extensive engagement by the United Nations](#) (UN) resulting in a list of 112 companies linked to [illegal settlements](#)
6. [Adverse findings](#) against two Britain-based companies by the Department for International Trade and OECD
7. Realising around [£2.7m of investment in 7 companies](#) is of a scale and nature unlikely to cause significant financial detriment to Merseyside Pension Fund members

In accordance with policies agreed by Merseyside Pension Fund and Northern Pool, would Pension Committee agree to consider a report at its next meeting – regarding adjusting its own and pooled investments in such companies?

The Pensions Committee resolved that officers bring a report to the next meeting of the Pensions Committee which addresses the points raised and related matters at agenda item 5.3 at the committee meeting of 29 November 2021, thereby allowing the committee to determine what, if any, adjustments in investments might be recommended to officers.

3.3 The Northern LGPS RI policy was the subject of a report to this Committee in September 2021 and was preceded by a workshop where the topics of responsible investment and sustainability were explored in greater detail. Following the approval of the Northern LGPS RI policy, MPF revised its Investment Strategy Statement (ISS) which includes a statement on the Fund's approach to "how social, environmental and corporate governance considerations are taken into account in the selection, non-selection, retention and realisation of investments". The ISS was approved at Committee in November 2021

3.4 Both the NLGPS RI policy and MPF's ISS state that unsatisfactory engagement with companies can escalate to the extent that holdings are reduced or sold in their entirety:

"Alongside its voting policy, MPF considers engagement on ESG matters to be integral to stewardship. The focus of its engagement activity (principally, but not exclusively) is the companies in which it invests across its public equity portfolio with the intention for this to be widened to include fixed income holdings.

As such, MPF carries out engagement on a collaborative basis with suitably aligned investors through several organisations (chief among them, the [Local Authority Pension Fund Forum](#), of which MPF is a founder member), to ensure that its engagement benefits from scale and clarity of voice. Where boards of investee companies are resistant to dialogue or change, MPF will escalate issues by, for example, voting against the re-election of the Chair of the board. Ultimately, where companies refuse to engage or change, MPF will consider adjusting its investments

as appropriate to the risks, in accordance with its Responsible Investment policy and its fiduciary responsibilities”.

- 3.5 A workshop was held on 25 January to set out existing practice in relation to the exercise of MPF’s Responsible Investment policy specifically in relation to human rights and progress on engagement with companies on the UN list. A summary follows:
- LAPFF engages globally on business and human rights most notably in relation to human rights abuses associated with tailing dams in Brazil, mining operations in the US, Colombia, Australia, Mongolia and Papua New Guinea. It has engaged with Shell in relation to human rights abuses associated with its operations in Nigeria and is starting engagement on companies associated with human rights abuses of the Chinese Uyghur population.
 - More than 40 LGPS funds have investments in the OPT and LAPFF is pursuing this issue on their behalf. Risks for company operations in the OPT include reputational risks, operational risks and financial risks. To date, LAPFF has written to 17 companies identified as having potentially problematic operations in or related to the OPT and issued voting alerts for non-responsive companies.
 - LAPFF has requested that these companies carry out credible, robust and independent human rights impact assessments in respect of their operations in the OPTs and that these assessments be made public.
 - A presentation on the international framework for business and human rights included relevant topics such as international legal standards; UN Guiding Principles on Business and Human Rights; Human Rights due diligence; and Investors’ Responsibilities.
 - The process of engagement is often slow and that is proving to be the case in this instance. With regards to LAPFF target companies, only a minority have responded to date. In respect of the UN list, we have been unable to obtain a satisfactory account from the UN body (OHCHR) of how the list is administered, including processes for review and ‘de-listing’ of companies.
 - Because LAPFF is acting on behalf of all its member LGPS funds, not all engagement activity can be disclosed as there are concerns it may prejudice further progress.
- 3.6 On behalf of LGPS funds, the Scheme Advisory Board and LAPFF met recently with the UN Special Rapporteur. The following statement has been issued:

25th January 2022 Meeting with Mr Michael Lynk

The Chair of and representatives from LAPFF, together with the SAB Secretary held a call with Michael Lynk on 11th January to discuss his [letter to funds](#). The discussion was productive and it was agreed to follow up with another call in a month or so. It was made clear that LGPS funds' primary objective in investment is to ensure pensions are paid but they do take human rights issues seriously in their decisions and through LAPFF are actively engaging with many of the companies listed on the database. In that respect Mr Lynk will provide further information on the database in particular the process for removing companies from it. LGPS Funds who are considering responding to Mr Lynk may wish to reference this ongoing discussion.

- 3.7 The values of MPF's investments in companies on the UN list are set out in the table below.

Holding	UN activity*	Direct (£)	Indirect (£)	Total (£)
Alstom S.A.	(e), (g)	70,172	198,638	268,810
Bank Hapoalim	(e), (f)	64,445		64,445
Bank Leumi Le-Israel	(e), (f)	71,122	142,885	214,007
Booking Holdings Inc	(e)		1,128,714	1,128,714
Expedia Group Inc	(e)		224,281	224,281
General Mills Inc	(g)	39,707	886,858	926,565
Israel Discount Bank Ltd	(e), (f)	33,685		33,685
Mizrahi Tefahot Bank Ltd	(e), (f)	19,946		19,946
Motorola Solutions Israel	(b)	109,226	902,221	1,011,447
Total				3,891,902

*UN activity – refer addendum

- 3.8 In the main, these are large, international companies with wide-ranging interests. As set out above, consistent with our policy, engagement with them is ongoing. There are short-term and long-term objectives with this engagement. The short-term objective is to have LAPFF target companies operating in this area engage meaningfully with LAPFF on their human rights practices in the OPT. The long-term objective is to have these companies produce credible, robust, independent human rights impact assessments of their practices in the OPT so that LAPFF members can assess whether the companies' human rights practices meet international human rights and humanitarian law standards. Advice continues to be that we should give the engagement process time whilst giving companies a clear sense of human rights expectations and why they are considered to fall short.
- 3.9 Divestment in this context would entail selling shares in the secondary markets of the companies in question to any willing buyers. The Fund's risk and responsibility would be transferred with the sale, but it would not be possible to be assured that buyers of the shares have equivalent or superior stewardship capabilities or commitment. Indirectly, the effect might be to send a message (to the companies and to the markets) about the unacceptability of carrying out certain business activities in the OPT as they impact upon human rights. However, such a message may not have

any immediate or tangible remedial effect on harms to human rights and it remains unclear whether divestment is a more effective means of conveying a message than sustained engagement. Collaborative engagement through LAPFF offers the possibility for greater investor influence to be exerted in this matter than has previously been the case.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The implications of divesting the holdings are not solely the costs of disposal but the potential returns foregone and that constraining an investable universe is sub-optimal from a risk/return perspective.
- 4.2 Operationally, it is relatively straightforward to divest holdings within segregated mandates (direct holdings). This is because MPF has direct ownership of the underlying assets/holdings and a segregated mandate enables MPF to vary the legal arrangement under which the assets are managed to exclude holdings if necessary. It is not possible to divest specific holdings within unitised mandates (indirect holdings). This is because MPF's economic interest is in units in the fund rather than the fund's underlying assets. Often, there are many investors in units in the fund which, by pooling assets, allows for efficiencies of management and operation. Consequently, the entire unitised holding would need to be sold and reinvested in another fund/benchmark. As well as incurring transaction and transition costs, the economic benefits of collective investing would be foregone.

5.0 LEGAL IMPLICATIONS

- 5.1 The government's legislative programme, laid out in May 2021, includes a Boycotts, Divestment and Sanctions Bill the purpose of which will be to stop public bodies from taking a different approach to UK Government sanctions and foreign relations and will cover purchasing, procurement and investment decisions. There is very limited information on the scope or timing of the Bill. The current law is stated below.
- 5.2 The Pension Fund has a fiduciary duties to its Members and Scheme Employers to seek to obtain market rates of return on its investments so that the defined pension benefits can be paid at minimal cost in terms of employers and employees pension contributions.
- 5.3 The Pension Fund can, however, take into account non-financial considerations such as ethical and human rights concerns in deciding upon its investments provided any action that it takes is likely to command the support of members of the Fund and would not be likely to cause any material financial detriment to the Fund.
- 5.4 In taking action on ethical and human rights grounds the Fund must act reasonably taking into account only relevant considerations. It must act fairly in accordance with the rules of natural justice. There is a presumption that most members of the Fund would support the impartial promotion of international and human rights law by the Fund other things being equal.
- 5.5 Section 149 of the Equality Act 2010 requires an equality impact assessment to be carried out which should have regard to any possible encouragement of acts of anti-semitism if the Fund singles out companies dealing with, or supporting Israel's

colonisation of the West Bank, whilst ignoring violations of international law or human rights in other states which are facilitated by companies in which the Pension Fund has invested. This is a point validly made in the letter dated 14 February 2022 from UK Lawyers for Israel in appendix 4.

- 5.6 It is therefore important that the Pension Fund adopts a fair and reasonable process to determine whether a company has been involved to a material extent in facilitating breaches of international law and of human rights in order to dispel any reasonable suspicion that the Fund is taking action against companies because of political bias against Israel or because of racial animosity against Jews.
- 5.7 To that end the Pension Fund should be seen to be making its own enquiries of the nine companies on the UN database and not relying wholly on the attempts at engagement made by others e.g. LAPFF. Members should also ensure that that they approach this subject with an open mind and be seen to be doing so .Any Member who considers that their decision will be the same whatever the response from the nine companies to the Pension Fund's attempts at engagement will have pre-determined the matter and should withdraw from the meeting so that a valid decision can be made by Members who do not have closed minds. In this context a pre-disposition towards a certain outcome is not the same as a pre-determination so long as the Member is still receptive to whatever facts may emerge from the Pension Fund's own attempts at engagement. Previously expressed opinions one way or the other would not disqualify a Member provided a reasonable person would conclude that the Member's mind was not already made up whatever the outcome of the attempts at engagement.
- 5.8 The Pension Fund should also make reasonable enquiries to ascertain whether investee companies are facilitating the construction and maintenance of illegal settlements in territories occupied as a result of military force other than in the OPT e.g. Turkey in Northern Cyprus and Morocco in the Western Sahara. Members of the Fund would expect the Pensions Committee to be even handed in its approach to companies that facilitate such settlements.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 A decision to divest may affect the operational management of portfolios. The implications can be determined once the nature of the decision is known.

7.0 RELEVANT RISKS

- 7.1 There are reputational risks to MPF if it is perceived not to be giving due consideration to human rights issues. The risk is presently managed through integration of the UN Guiding Principles on Business and Human Rights (UNGPs) into the Fund's stewardship practices (via LAPFF and Northern LGPS). Following the UNGPs, human rights due diligence is applied to Fund investments on an ongoing basis. The NLGPS RI policy states that: "These principles [UNGPs] underpin expectations the Pool applies to all investee companies....Our objective in encouraging greater corporate transparency is for this to drive real-world improvements in practice."

- 7.2 There are financial risks to MPF if the value of its investments is affected by reputational risks, operational risks and financial risks arising from investee company operations in the OPT.
- 7.3 With regard to Israeli settlements, the UK government has a clear position. The West Bank, including East Jerusalem, Gaza and the Golan Heights have been occupied by Israel since 1967. Settlements are illegal under international law and products produced in Israeli settlements located within the OPT are not entitled to benefit from preferential tariffs and should be labelled so as not to mislead the consumer. The UK government warns that citizens and businesses should be aware of the potential reputational implications of getting involved in economic and financial activities in settlements, as well as possible abuses of the rights of individuals.

The UK Government encourages trade with the OPTs and notes that a number of British companies have proven success in the market. Members of the Fund would not expect a mere economic presence in the OPT to raise ethical concerns as that presence could benefit Arabs as well as Israelis. The Palestinian economy and the Palestinian private sector are, however, heavily constrained by the conduct of the Israeli occupation. This includes restrictions on movement and access for goods and people (including between the West Bank, including East Jerusalem, and Gaza), extensive and bureaucratic permit systems, and import/export restrictions (particularly in relation to Gaza).

8.0 ENGAGEMENT/CONSULTATION

- 8.1 As set out in the report.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 Section 149 of the Equality Act 2010 provides that a public authority must in the exercise of its functions have due regard to the need to eliminate unlawful discrimination and to the need to foster good relations between persons who share a relevant protected characteristic such as ethnic origins and those who do not share it.
- 9.3 It is therefore important that the Committee weighs in the balance the possible impact any action may have on good relations between the Jewish and non-Jewish communities in the UK. The use of emotive language should be avoided. Opportunities should be given to the companies and bodies supportive of Israel to state their case. A fair process should be adopted. The question should be whether to withhold support for unlawful settlements of colonists in occupied territories world wide of which the actions of the Israeli Government in the OPT is but one, albeit better known, example.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 Not relevant to this report.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 Not relevant to this report.

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APPENDICES

- Appendix 1 EXEMPT LAPFF Israel Palestine engagement
- Appendix 2 Letter from UN Special Rapporteur
- Appendix 3 Letter from Amnesty
- Appendix 4 Letter from UK Lawyers for Israel

BACKGROUND PAPERS

LAPFF Quarterly Engagement Reports

Overseas Business Risk – The Occupied Palestinian Territories

<https://www.gov.uk/government/publications/overseas-business-risk-palestinian-territories/overseas-business-risk-the-occupied-palestinian-territories>

UN Human Rights Council

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Pages/ListReports.aspx>

KLP – Decision to exclude companies with links to Israeli settlements in the West Bank.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

ADDENDUM OF LISTED PRACTICES FOR UN DATABASE

The request for the production of a database made by the Human Rights Council in paragraph 17 of its resolution 31/36 was in follow-up to the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63). In paragraph 96 of its report, the fact-finding mission set out a list of activities that had raised particular human rights concerns (referred to as “listed activities”). In its resolution 31/36, the Council defined the database by reference to those listed activities, which are the following:

- (a) The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructure;
- (b) The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements;
- (c) The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olive groves and crops;
- (d) The supply of security services, equipment and materials to enterprises operating in settlements;
- (e) The provision of services and utilities supporting the maintenance and existence of settlements, including transport;
- (f) Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;
- (g) The use of natural resources, in particular water and land, for business purposes;
- (h) Pollution, and the dumping of waste in or its transfer to Palestinian villages;
- (i) Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints;
- (j) The use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements.

7. The parameters of the database encompass business enterprises, whether domiciled in Israel, the Occupied Palestinian Territory or abroad, carrying out listed activities in relation to the Occupied Palestinian Territory (A/HRC/37/39, para. 5).

8. The database produced in response to the request made by the Human Rights Council in its resolution 31/36 includes only business enterprises involved in the 10 activities listed above. It does not cover all business activities related to settlements, nor does it extend to other business activities in the Occupied Palestinian Territory that may raise human rights concerns. In addition, while there may be other types of enterprises involved in significant business activities related to settlements, only business enterprises are considered; non-business enterprises are excluded from consideration.