

Report to: Lead Member for Resources and Climate Change

Date of meeting: 3 June 2025

By: Chief Operating Officer and Chief Finance Officer

Title: Petition – Divest from Israel and Stop Support for Genocide.

Purpose: To consider the petition that seeks the County Council to divest from Israel and stop support for genocide.

RECOMMENDATIONS:

The Lead Member for Resources and Climate Change is recommended to advise the petitioners:

- (1) that the East Sussex Pension Fund has an agreed position regarding investments as detailed in Appendix 1; and
 - (2) to note the limitations on the Council in respect of procurement and termination of contracts as set out in paragraphs 2.8 to 2.12 of this report.
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1. Background

- 1.1 At the County Council meeting on 20 March 2025, a petition was presented to the Chairman by Councillor Hilton on behalf of the Hastings and District Palestine Solidarity Campaign.
- 1.2 The petition specifically requests that East Sussex “*divest the Local Government Pension Scheme (LGPS) and end procurement contracts, with companies enabling Israel’s grave violations of Palestinian rights.*”
- 1.3 Standing Orders provide that where the Chairman considers it appropriate, petitions are considered by the relevant Committee or Lead Member and a spokesperson for the petitioners is invited to address the meeting. The Chairman has referred this petition to the Lead Member for Resources and Climate Change. A copy of the petition is available in the Members’ Room.

2. Supporting Information

East Sussex Pension Fund (The Fund) Investment

- 2.1 In managing the East Sussex Pension Fund (the Fund), members of the Pension Committee are subject to a fiduciary duty. This requires them to act in the best interests of the Fund’s beneficiaries, and to make decisions that are reasonable, rational and impartial. Pursuant to this fiduciary duty, the primary aim of the Fund is to provide pension benefits for members and their beneficiaries when they fall due. To do this, the Fund invests to secure the best financial return for its members, balancing risk and return. The power of investment must be exercised for investment purposes, and not for any wider purposes. The Fund takes a risk-based approach in setting and implementing its investment strategy.
- 2.2 The Fund publishes its [Investment Strategy Statement](#), which includes the Responsible Investment Strategy and [Funding Strategy Statement](#), on its website, which clearly lays out the approach of the Fund when investing. The Fund also engages with its fund managers and with companies through collaborative engagement.
- 2.3 The Pension Committee issued a statement in July 2022 relating to the Fund’s exposure to the companies flagged by United Nations Human Rights Office of the High Commissioner’s (“OHCHR”)

A/HRC/37/39 Report as part of the Fund's stewardship responsibilities to consider the operational impact on labour and other human rights issues, which can affect long term financial return of a company. This statement is attached at Appendix 1.

- 2.4 Whilst the Fund has Investment Strategy objectives, it cannot dictate the underlying holdings of an Investment Manager. Practically, on a day-to-day basis, the Fund does not have sight of any investment transactions made by an Investment Manager, or what is owned on any given day. Responsibility for day-to-day interaction with companies is delegated to the Fund's investment managers, including the escalation of engagement when necessary.
- 2.5 Investment managers have a mandate to deliver investment returns within a specific asset class and will regularly change the underlying assets or holdings within the portfolio. As the Fund is directed by Government to pool its investments, it does not set the parameters of the investment mandate and cannot intervene in any sale or purchase within a portfolio. As a result, to remove any specific investment exposure to a company or group of companies, the Fund would need to sell the entire investment manager position and procure and invest in segregated mandates.
- 2.6 The Fund recognises that Environmental, Social and Corporate Governance ('ESG') issues can have a material impact on the long-term performance of its investments. Investors have a role in shaping and influencing company actions relating to human rights bringing the "S" of ESG into focus. "Social" performance of companies considers the operational impact on labour and other human rights issues of people and communities in which it engages.
- 2.7 The Fund is an active member of the Local Authority Pension Fund Forum (LAPFF), which carries out engagement on behalf of the member funds. The Fund is supportive of the LAPFF position on the occupied territories, which seeks to encourage companies operating in that jurisdiction to review and have regard for the human rights of all individuals with whom they interact in the conduct of their operations.

Procurement and Termination of contracts

- 2.8 Public Sector contracts are legally binding agreements. Generally, the Council will only be permitted to terminate such arrangements where it can rely on a contractual clause permitting it to do so or if there is another legal basis for doing so, for example, where the other party has committed a repudiatory breach. External factors unrelated to the performance of the contract will not, unless expressly stated in the contract, give rise to a ground for termination. If the Council were to terminate one or more existing contracts without a valid legal right to do so (whether under the contract or common law) this could amount to a repudiatory breach of contract, exposing the Council to the risk of damages claims being made against it.
- 2.9 Procurement Policy Note (PPN) 01/22, issued by the Government following the Russian invasion of Ukraine encourages in-scope organisations to review their contract portfolio and consider terminating contracts with Russian or Belarusian suppliers following the imposition of financial and investment sanctions by the Government. However, the PPN states that this should only be considered where the contract includes "*suitable, commercially acceptable termination provisions*" and where "*an alternative supplier can be sourced in line with value for money, affordability and with minimal disruption to public services.*" This re-enforces that, even where government sanctions have been imposed, the Council still needs a valid legal basis for terminating an existing contract.
- 2.10 If the Council were to terminate works, services or supply contracts as suggested by the petition, it would of course need to re-procure these services from alternative suppliers. However, section 17 of the Local Government Act 1988 prohibits local authorities from excluding suppliers for public supply or works contracts (i.e. contracts for the provision of goods, services or works) based on "non-commercial matters". An organisation's political affiliations would be viewed as a non-commercial

matter for this purpose, making it unlawful for the Council to refuse to contract with a supplier purely on this basis. In addition, PPN 01/16 makes clear that the Council cannot exclude a supplier on the basis of the organisation's country of origin. The PPN states:

"Public procurement should never be used as a tool to boycott tenders from suppliers based in other countries, except where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government. There are wider national and international consequences from imposing such local level boycotts. ... it can also be unlawful and lead to severe penalties against the contracting authority and the Government."

- 2.11 The grounds for excluding a supplier from a procurement are set out in the Procurement Act 2023 in Schedules 6 (mandatory exclusions) and Schedule 7 (discretionary exclusions); these relate to the supplier itself and not a third party with which the supplier does business, is otherwise politically affiliated with or provides financial support to.
- 2.12 Terminating a contract and / or excluding suppliers from a procurement exercise without a valid legal basis for doing so would expose a public authority to the risk of legal challenge, including:
- Judicial Review: The organisation could challenge the decision on public law grounds through an action for judicial review; or
 - Breach of Contract Claims: If the termination is not supported by a contractual right to terminate, or there are no other legitimate grounds for termination, the Council could be liable to a claim for damages.

3. Conclusion and reasons for recommendation

- 3.1 The Council has considered the petitioners' requests *"to divest the Local Government Pension Scheme and end procurement contracts, with companies enabling Israel's grave violations of Palestinian rights"* together with the fiduciary duty upon Fund managers, the Fund's investment strategy and relevant legal requirements in relation to contracts and procurement to formulate a response.
- 3.2 The response is as set out within this report and therefore the Lead Member for Resources and Climate Change is recommended to advise the petitioners:
- (1) that the East Sussex Pension Fund has an agreed position regarding investments as detailed in Appendix 1; and
 - (2) to note the limitations on the Council in respect of procurement and termination of contracts as set out in paragraphs 2.8 to 2.12 of this report.

IAN GUTSELL
Chief Finance Officer and

ROS PARKER
Chief Operating Officer

Contact Officer: Ian Gutsell, Chief Finance Officer
Tel. No: 01273 481399
Email: ian.gutsell@eastsussex.gov.uk

Local Member(s):

All

Background Documents

East Sussex Pension Fund Investment Strategy [Statement](#)

Funding Strategy [Statement](#)

Petition submitted to the Chairman on 20 March 2025