



Devon Pension Fund



Forging better futures by investing
for a world worth living in



Introduction

This document sets out to show that within the legal framework of the Local Government Pension Scheme (LGPS) and the Pension Committee Member's fiduciary duties, it is legally possible, and in light of the scheme's portrayal as responsible investors, legally more consistent, to divest from weapons manufacturers and companies complicit in illegal occupation and well documented, wide spread and severe human rights abuse.

It is intended to serve as a fair summary of the subjects of wider fiduciary duties and the interplay between committee members and industry professionals who are inherently resistant to divestment.

The structure of LGPS operations has, in recent years, removed most investment decision making from local fund Administering authorities (AA) and left them with little more than distant retrospective oversight, while being designed in such a way that those AA committee members remain legally, and in the eyes of the public, fully responsible for the investment decisions other people are making.

The situation has occurred for good financial reason; there is a clear benefit of having investments managed by professionals and they naturally wish to be allowed to get on with their job with the minimum of interference. The necessity of speed means every technological advantage must be utilised in order to manage investments for the best financial outcome. A significant amount of automation can be assumed to be assisting trading.

Whether by a distant company or AI, trading is limited by set criteria. An Investment Strategy Statement (ISS) is legally required to be provided by the AA to the companies that have been set up to manage pooled funds, in Devon's case Brunel and (25%) further delegated to Legal & General Investment Management (LGIM). The ISS sets out the criteria those companies must follow in their decision making, thereby any decision they make, as long as it is within the constraints of the ISS, is still the legal responsibility of the council Pension Fund Committee Members.

There are signs the ISS is not sufficiently stringent in its exclusion criteria, which could expose the Fund and its administrators to significant reputational harm and potential legal challenge, both of which would have financial ramifications for the fund.

With the advent of ESG factoring fiduciary duty is increasingly clarified by legal guidance as being more than merely maximising financial returns. Regulation 7(2)(e) of the "Guidance on Preparing and Maintaining an ISS"¹, in the context of considering non-financial factors, states that Fund administrators "... must act in accordance with ordinary public law principles, in particular, the ordinary public law of reasonableness. They risk challenge if a decision they make is so unreasonable that no person acting reasonably could have made it."

¹ <https://www.lgpslibrary.org/assets/statgui/ew/201707ISS.pdf>

Stakeholder expectations would inform what is considered reasonable. Societal moral norms and the strong emphasis on responsible investment portrayed by the Devon Pension Fund and Brunel (the nuance of which is explained in more detail later) show the AA should reasonably expect scheme members wishes would not align with:

- Seeking to profit from the aftermath of the October 7th Hamas attack on Israel.²
- Not to financially assist or profit from weapons sales that support what is ruled by the ICJ to plausibly be a genocide.
- Not to assist the military of a government whose leader has an outstanding International Criminal Court arrest warrant for crimes against humanity and war crimes committed by that military.
- Not to increase investments in companies specifically flagged by the UN as supplying a state suspected of carrying out serious human rights violations, war crimes and genocide.³
- Not to financially assist and profit from illegal West Bank settlements
- Not to financially assist or profit from companies which have significantly enhanced Russia's military capability prior to their invasion of Ukraine and who have been reported as circumventing sanctions to continue to support Russia's military. (Section 10.9.d)

This document will show the current ISS has allowed all of the above to happen.

The government guidance on creating an ISS goes on to state the AA "may also take purely non-financial considerations into account", and that "some part of the financial return may be forgone in order to generate the social impact." The investments detailed in this document, made by Brunel and LGIM, show that the AA have not given due consideration to what it should reasonably expect the scheme members would want when creating the ISS and have not taken advantage of their ability to forego some profit which could reasonably be described as from a morally indefensible source.

In short, the AA is failing in their fiduciary duty to encompass the broader goals of the scheme members. The Investments do not match the pension fund and Brunel's UN respecting and human rights conscious branding, which is used to encourage members to hold their pension in the scheme, which, even if worded carefully to avoid explicit promises or serious commitment, creates a fiduciary expectation of ethical conduct which it fails to deliver.

In the new dynamics of the way LGPS are run and in respect of ensuring the scheme members broad interests are upheld, a function of the Council committee members of the AA is to temper the purely financial motives of the Employees who are making the investment decisions. A situation exists where committee members lack sufficient knowledge to create the ISS without relying heavily on the advice of those same Employees the ISS is supposed to control. Advisors appear to be influencing Fund administrators in order to create ISS's which give minimum restraint over the financial pool companies.

² Timestamps of the huge increases made in holdings of weapons manufactures by LGIM will likely show a rush to take advantage of the 10% spike in arms manufactures share prices that occurred when markets opened on October 9th following Hamas's attack. Because the ISS makes no distinction between arms manufacturers stocks and any other, there is no restriction on profiting from this type of incident.

³ <https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk>

The unethical investments that result of that minimal restraint are then not inspected in detail by Fund administrators who rely on the same employees to provide the oversight.

For example, in a recent response to a matter of concern raised before the 2nd December Devon Pension Committee meeting the “factual Briefing Note” prepared by the Director of Finance and Public Value claimed there were no more than £12 million invested in companies selling arms to Israel and all in the Global Developed Paris Aligned Equity Fund managed by Legal and General Investment Management. Stating as fact:

“The Devon Pension Fund does not directly own shares or bonds in any of the companies concerned.”⁴

The claim said to be a matter of fact and with other definitive sounding statements, from the head of the finance department, would make committee members feel there is no need for them to check again.

Information in this document shows that Devon PF owns \$20 million of actively managed shares and bonds, and a total of over \$61 million in companies currently supplying Israel and/or assisting illegal settlement of the West bank, and/or supplying Russia. When challenged with this information at the December 2nd meeting, the Council Officers admitted the information they had provided was incomplete and therefore misleading.

To take a specific example Devon holds €93,000 in a recently purchased bond from Safran SA and €3,453,000 in the actively managed TM Brunel High Alpha Global Equity Fund. This company has significant and well publicised military contracts and collaborations to supply targeting equipment to Israel and Russia.

One of two things must be true: Incomplete information was deliberately provided; or the trusted advisors are themselves as unaware of the investments as the AA committee members. Either way it points to a systemic problem in the running of the Devon Pension Fund. Ultimately it shows the AA should not rely solely on this source for advice on the appropriateness of their ISS or to provide oversight of investments.

Sections 2-7 of this document shows the current problematic investments in the Devon Pension Fund along with the location of the holdings. All of the holdings information has been taken from the Devon Pension Fund website, under “Annual Report and Accounts” <https://www.devonpensionfund.org.uk/fund-policies/important-documents/>

Pertinent legal aspects of creating exclusion criteria are looked at in section 8.

The potential criminal illegality of the investments is looked at in section 9. In some ways this inconclusive aspect is not a primary concern and shouldn’t become a distraction. As said by Nigel Giffin KC himself, even if it is not illegal that doesn’t confirm the appropriateness of the investments. On the other hand, if the fund used the legal ability to exclude clearly unethical investments as discussed in section 8, it would also resolve any concerns of criminal liability.

Section 10 addresses some of the usual reasons given to fund administrators by their employees and industry advisors, as to why they should continue to be unconcerned over

⁴ <https://democracy.devon.gov.uk/documents/s50540/DFP-24-122%20Notice%20of%20Motion.pdf>

the unethical nature of these slightly above average performing investments and why they should continue to act as a buffer between the ones making the investment decision and the unhappy scheme members and wider public.

Section 12 provides a ChatGPT review of the document. This might seem strange to some but AI is becoming a normal part of the world of trustees. It can be used to summarize their legal duties, interpret complex guidance and to draft statements such as the ISS. While professional advisors might apply an anti-divestment spin, AI is more neutral in strictly following legal frameworks. It is also a non-judgemental and confidential sounding board for trustees to check the legal consistency of suggestions for change.

You can always find the latest version of this document on the Pension Divest website:

www.pensiondivest.org.uk

05/01/25 v.1.09 Updated holding values to Sept 2024, added L3Harris, Textron, Leidos and Brunel's total Israeli bank holdings. Added sections 10.2a & 10.2.b

02/01/25 v1.08 Added sections 8.3.c, 10.9.h, 10.9.i and 10.9.j

26/12/24 v1.07 Added section 8.11.a, 9.2.d, 10.6, 10.7 and 10.9.a

16/12/24 v1.06 Added section 8.3.b, 8.11 and 8.12

06/12/24 v.1.02 Added sections 9.2.c, 10.9.b and 10.10

Contents

Introduction.....	2
Section 1: Summary of legal rulings related to Israel and Russia.....	10
Accusation of genocide and the (ICJ) Provisional Measures (January 26, 2024):.....	10
International Criminal Court (ICC) Arrest Warrants issued:.....	11
The ICJ ruling of Apartheid and the UN requirement of withdrawal:.....	11
Rulings related to Russia’s annexation of Crimea and invasion of Ukraine.....	12
Section 2: Holdings related to military supply	13
L3HARRIS TECHNOLOGIES INC	13
RENK Group AG	13
MTU Aero Engines	14
General Dynamics.....	14
General Electric.....	16
Palantir Technologies Inc.....	17
Teledyne Technology.....	17
Honeywell International Inc	18
Northrop Grumman Corp	19
Rheinmetall AG.....	20
Boeing.....	21
TRANSDIGM Group Inc	22
BAe Systems	22
Thales.....	23
Howmet Aerospace	23
Saab AB.....	24
HEICO Corp	24
StandardAero	25
Ametek.....	25
Spirit Aerosystems.....	25
CATERPILLAR INC	26
Safran SA.....	27
Bombardier Inc	27
Motorola.....	27
Hewlett Packard	29
AAR Corp.....	29

Embraer SA	30
Textron.....	30
Leidos.....	30
Section 3: Exposure related to illegal occupation	32
Bank Hapoalim & Bank Leumi Bonds	32
Brunel’s Israeli bank holdings as of June 2024.....	32
Leviathan & Energean Bonds.....	33
Alstom Bond	33
Altice Bonds	34
Cemex Bonds	35
CNH Industrial Shares & Bonds	35
Expedia Group, TripAdvisor, Booking.com & AirBNB.....	35
Section 4: Exposure Vs Events	37
Section 5: Exposure within Devon’s portfolio	39
Section 6: Brunel Funds with current or previous weapons	41
Section 7: Brunel’s UN OPT complicit investments	42
Section 8: The legality of divestment	44
1. Summary of the most pertinent points.....	44
2. Background.....	45
3. Is there good reason to think scheme members might share the concern:.....	46
a. The Wiltshire Survey	49
b. The Devon Survey	50
c. The Surrey Survey.....	50
c. Interpreting the silent majority	51
4. “Significant financial detriment” in relation to fiduciary duty:.....	52
5. Would the suggested divestment cause “Significant financial detriment”?.....	53
6. Can Devon’s pension fund afford it.....	54
7. Would members be willing to put aside moral concerns for 0.33% financial gain?.....	55
8. Did test of ‘no risk of significant financial detriment’ change with <i>Palestine</i> case?.....	56
a. The mistake in <i>Palestine</i>	57
b. In the Pensions Law Handbook ed. 15	58
c. The impact of the mistake being repeated	59
d. In the Charity sector.....	61
e. Potential consequences if left uncorrected.	61
9. Who is calling your Fund’s shots?	62

10. Is the suggested divestment even a non-financial factor?.....	63
11. The UK Stewardship Code 2020	64
a. Devon’s creative interpretation of the code	65
12. Which scheme members would be materially impacted?.....	68
Section 9: The Illegality of investment	69
1: Has something been done which amounts to genocide, a crime against humanity or a war crime?	69
a. The precautionary principle and reasonable cause to suspect	71
2: Did the [investing] authority or the individual assist that act? Alternatively, did they assist someone else’s act of assistance	71
a. Shareholding	72
b. Bonds & other exposure	73
c. Legal & General Investment Management’s Opinion	74
d. Committees claiming they <i>are</i> directly funding arms	74
3: Did the authority or the individual have the necessary mens rea?	74
4. Conclusion	75
Section 10: Smoke screens and usual excuses	76
1. Ethics washing	76
2. “Don’t concern yourself, we’ll be engaging”	77
a. LAPFF admit defeat on influencing weapons manufacturers.....	79
b. Brunel’s shareholder voting example	81
3. “We don’t own the shares...”	81
4. “It is too complicated to divest” – Blackrock/LGIM etc	82
5. “It will cost too much to divest”	84
6. Just don’t rely on the officers.....	84
7. “We can’t take a political position”	84
8. “The SAB say we can’t listen to protestors”	87
a. Do campaigners need to be scheme members?	88
9 “Our investments help defend democracy”	88
a. These are not “war bonds”	88
b. Private companies are for private gain, not national defence	89
c. Arming both sides of conflicts	89
d. Training and Arming Russia, China and Iran.....	90
e. A corrupt industry, past and present	93
f. A perverse incentive and perverse gains.	95

g. The computer says yes.....	96
h. Multiple futile arms treaties	96
i. The faux neutrality of the Swiss	98
j. British arms exports to Russia	99
k. Conclusion	100
10. “Look, we’re divested from carbon and cluster munitions...”	101
Section 11: Two ways forward	102
Section 12: ChatGPT analysis.....	103
Assessment of the Document's Argument:.....	103
Inaccuracies or Weaknesses:	104
Overall Judgment:	104
Section 13: Contact information	105

Section 1: Summary of legal rulings related to Israel and Russia

Accusation of genocide and the (ICJ) Provisional Measures (January 26, 2024):

- **Background:** On December 29, 2023, South Africa filed a case against Israel at the International Court of Justice (ICJ), alleging violations of the 1948 Genocide Convention in Gaza. South Africa accused Israel of committing acts with the intent to destroy, in whole or in part, the Palestinian population in Gaza.
- **ICJ's Order:** The ICJ found a plausible risk of genocide and ordered Israel to:
 - Take all measures within its power to prevent the commission of acts within the scope of Article II of the Genocide Convention, including killing members of the group and causing serious bodily or mental harm.
 - Ensure that its military does not commit any acts described above.
 - Take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of the Genocide Convention.
 - Report to the Court on all measures taken to give effect to the Order within one month. Israel has failed to comply.

28, 2024, South Africa submitted a comprehensive memorial to the International Court of Justice (ICJ) in its case against Israel. This submission is a pivotal step in the legal proceedings initiated by South Africa in December 2023.

- **Volume and Scope:** The memorial comprises approximately 750 pages of detailed legal arguments, supported by over 4,000 pages of annexed evidence. This extensive documentation aims to substantiate South Africa's claims against Israel.
- **Allegations:** South Africa asserts that Israel has engaged in actions intended to destroy, in whole or in part, the Palestinian population in Gaza. The allegations include:
 - Deliberate killing of civilians.
 - Infliction of serious bodily and mental harm.
 - Creation of life-threatening conditions through blockades and restrictions on humanitarian aid.
 - Use of starvation as a method of warfare.
 - Forced displacement of populations.

Context and Implications:

The case has garnered international attention and several countries have expressed intention to intervene or support the proceedings. While primarily concerned with state actors the outcome of this case could have profound implications for international law and accountability of investors concerning alleged acts of genocide and violations of humanitarian law.

International Criminal Court (ICC) Arrest Warrants issued:

- **Background:** ICC issued arrest warrants against Israeli Prime Minister Benjamin Netanyahu, Defence Minister Yoav Gallant, and Hamas leaders: Mohammed Deif. The charges pertain to alleged war crimes and crimes against humanity committed during and after the October 7, 2023, attacks.
- **Allegations Against Israeli Leaders:** Netanyahu and Gallant were accused of:
 - Wilful killing.
 - Starvation of civilians as a method of warfare.
 - Wilfully causing great suffering or serious injury to body or health.

The ICJ ruling of Apartheid and the UN requirement of withdrawal:

The recent UN resolution requiring Israel end its occupation of the West Bank within 12 months, along with the ICJ's finding that Israel's practice of segregation amounts to apartheid, heightens legal, reputational, and financial risks for investors in companies operating in these areas. Key implications include:

1. **Legal Risk of Complicity:** Companies may face accusations of complicity in human rights violations and apartheid, with possible lawsuits under international human rights laws that enforce due diligence requirements.
2. **Due Diligence and Liability:** Companies could face stricter due diligence requirements to avoid association with human rights abuses, potentially leading to liability under corporate accountability laws.
3. **Reputational and Financial Risks:** Companies may encounter consumer backlash, investor pressure, and divestment calls, with some financial institutions potentially restricting funding for those involved in the occupied territories.
4. **Sanctions and Trade Restrictions:** Although no current sanctions are in place, the resolution increases the likelihood of future trade restrictions and sanctions targeting companies with ties to the settlements.

To mitigate these risks, companies should consider divesting, bolstering human rights due diligence, and monitoring legal developments closely.

Rulings related to Russia's annexation of Crimea and invasion of Ukraine.

International rulings on Russia's annexation of Crimea and invasion of Ukraine consistently condemn its actions as violations of international law. Key highlights include:

1. **ICJ:** Ordered Russia to halt military operations in Ukraine (2022) and found violations of racial discrimination laws in Crimea (2024).
2. **ICC:** Issued arrest warrants for war crimes, including the deportation of Ukrainian children.
3. **UN General Assembly:** Declared Crimea's annexation illegal and demanded Russian troop withdrawals.
4. **ECHR:** Accepted cases on human rights abuses in Crimea, including persecution of Crimean Tatars.
5. **UK Sanctions:** Prohibit exports of weapons, ammunition, and dual-use goods, alongside freezing assets of defence-related entities.

Section 2: Holdings related to military supply

L3HARRIS TECHNOLOGIES INC

US5024311095 L3HARRIS TECHNOLOGIES INC

New addition to the Paris fund by LGIM, a year into the Gaza genocide. **USD 1,583,534** as of Sept 2024

Supplies Israel with engines for their Merkava tanks, continually seen in evidence of war crimes committed in Gaza. Shelling hospitals and other protected sites. Shelling UN peace keeping positions in Lebanon.

L3Harris has supplied Israel with tactical radio solutions compatible with ground, air, and maritime platforms.

L3Harris supplies phone tracking equipment and in October 2024 announced a partnership with AI targeting company Palantir, raising speculation that they are developing more systems such as the infamous "Where's Daddy?" and "Lavender" programs used by the IDF on Gaza.

RENK Group AG

DE000RENK730 RENK GROUP AG

No shares were listed before the June 2024 holdings statement meaning a new investment of **EUR 561,206** was made after the ICJ ruling of plausible genocide, by Brunel in its actively traded BRUNEL SMALLER COMPANIES EQUITIES FUND. The investment was sold as of Sept 2024.

Renk Group is a German manufacturer specializing in high-performance gearboxes and supplies transmission systems for Israel's Merkava main battle tanks, which are produced under license in Israel by Ashot Ashkelon. Additionally, RENK's factory in the U.S. manufactures MT883 engines, enabling Israel to procure them through the Foreign Military Sales program. These engines are made under license from their German developer, Rolls-Royce subsidiary MTU.

The CEO of Renk on February 7th 2024, before Brunel acquired the shares, credits Israel's assault on Gaza for the rising share price:

"Everything above the issue price is a great message to the market," Renk CEO Susanne Wiegand told Reuters. "The attacks on Israel and the subsequent war in Gaza was a turning point and changed investor sentiment towards defence," she added.⁵

⁵ <https://uk.investing.com/news/stock-market-news/renk-makes-trading-debut-on-frankfurt-stock-exchange-3326534>

Renk Groups shareholders will expect good returns as Germany approved another \$100 million in arms exports to Israel in October 2024, a year after their onslaught on Gaza began.⁶



MTU Aero Engines

DE000A0D9PT0 MTU Aero Engines Germany

Shareholding value increased by over £150,000 euros from £2,497,899 (Sep 23) to £2,658,169 (Dec 23). Holdings after the ICJ ruling were EUR 3,160,745 (Mar 24) and increased by half a million Euros to **EUR 3,656,695** as of Sept 2024. Shares are within the actively traded BRUNEL SMALLER COMPANIES EQUITIES Plus a new Bond of **EUR 22,502**

MTU partners with General Electric to provide the Israeli Air Force's T64 engines for their Sikorsky CH-53 Yas'ur military helicopters and the F110 engines for the F-15 (Baz, Ra'am) and F-16 (Barak, Netz, Sufa) which form the backbone of the Israeli strike and fighter capabilities.

General Dynamics

US3695501086 GENERAL DYNAMICS CORP

LGIM more than doubled shareholding from £724,139 (Sept 23) to £1,510,173 after October the 7th. After the ICJ ruling, between June and Sept 2024 holding was doubled again to **USD 2,911,006** in the Paris fund.

⁶ <https://www.timesofisrael.com/germany-approves-over-100-million-in-arms-exports-to-israel-angering-rights-groups/>

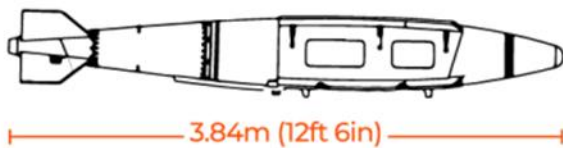
A prominent U.S. military contractor, supplies Israel with various military equipment and services, including:

- **Aircraft Armaments:** The company manufactures 20mm and 25mm guns for F-15, F-16, and F-35 fighter jets, as well as 30mm "gun pods" for F-15 and F-16 aircraft. These armaments are integral to Israel's air combat capabilities.
- **Ammunition Loading Systems:** General Dynamics provides 20mm ammunition loading systems installed on F-15 aircraft, facilitating efficient rearming processes.
- **Bomb Components:** The company produces metal bodies for the MK-80 series bombs, including the 500-pound MK-82, 1,000-pound MK-83, and 2,000-pound MK-84 bombs. These munitions have been extensively used by the Israeli Air Force in assaulting Gaza and now Lebanon.⁷

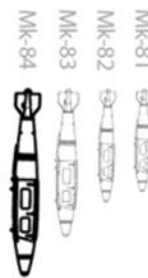
Israel's US-made 2,000lb bomb

Israel has repeatedly used powerful MK-84 bombs in Gaza, each killing dozens of Palestinian civilians. They can destroy buildings and kill people hundreds of metres away.

MK 84 907kg (2,000-pound) bomb



A 2,000lb bomb can inflict damage within a radius of 300 metres (1,000 feet)



The MK-84 is the largest of the Mark-80 series of weapons and is typically dropped from F-16 or F-15 jets



- **Mortar Cartridges:** In August 2024, the U.S. approved a sale to Israel of 50,400 M933A1 120mm High Explosive (HE) mortar cartridges.⁸
- **Tank Ammunition:** In August 2024, the U.S. approved a sale to Israel of 32,739 120mm tank cartridges, including M1147 High Explosive Multi-Purpose with Tracer (HEMP-T) and M830A1 High Explosive Multi-Purpose Anti-Tank (MPAT) with Tracer cartridges. General Dynamics Ordnance and Tactical Systems is the principal contractor for this \$774.1 million deal.⁹

⁷ <https://www.reuters.com/world/us-has-sent-israel-thousands-2000-pound-bombs-since-oct-7-2024-06-28/>

⁸ <https://www.dsca.mil/press-media/major-arms-sales/israel-m933a1-120mm-high-explosive-mortar-cartridges>

⁹ <https://www.dsca.mil/press-media/major-arms-sales/israel-120mm-tank-cartridges>



General Electric

XS0229561831, US3696043013 GEN ELECTRIC

Brunel holds a bond with Devon's share valued at **USD 1,160,436** as of Sept 2024. The bond provides direct financial assistance to the company and bears an income of interest, allowing Devon Pension Fund to profit from the war.

LGIM added a new holding of USD 147,561 to the Paris fund in Q3 2024

General Electric (GE) has been involved in supplying military equipment and technology to Israel, particularly through its aerospace division:

- **Aircraft Engines:** GE provides engines for various Israeli military aircraft, including:
 - **F-16 and F-15 Fighter Jets:** Equipped with F110-GE-129 engines.
 - **AH-64 Apache Helicopters:** Utilizing T700-GE-701C engines.
 - **CH-53 Heavy Lift Helicopters:** Powered by CH-53D/E engines.
- **Recent Contracts:** In April 2023, GE Aviation was awarded a \$683.7 million contract to produce and deliver 169 T408-GE-400 turboshaft engines. This contract includes engines for the government of Israel, supporting CH-53K production helicopters and spare engine inventory.¹⁰

¹⁰ <https://www.govconwire.com/2023/04/ge-aerospace-books-684m-navy-contract-to-manufacture-turboshaft-engines/>

Palantir Technologies Inc

US69608A1088 PALANTIR TECHNOLOGIES INC

Shareholding halved from £307,158 (Sept 23) to £154,885 (Dec 23) before the ruling. Increasing to USD 216,885 (Mar 24) after the ICJ ruling. Increased again to be USD 234,376 as of June 2024 and again to be **USD 320,287** as of Sept 2024.

Palantir Technologies Inc., a U.S.-based data analytics firm, has established a significant presence in Israel's military sector.

Palantir's AIP is an AI-based system for target acquisition. Concerns have been raised over issues of inaccuracy, lack of human oversight, misidentification, collateral damage, lack of transparency and accountability, potential for bias.

Details of its use in Gaza are guarded but of its use in Ukraine Palantir's CEO Alex Karp says his product is "responsible for most of the targeting in Ukraine." A government official stated of the software "From the moment the algorithms set to work detecting their targets [i.e., people] until these targets are prosecuted [i.e., killed] no more than two or three minutes elapse,"

The company is currently developing an even more powerful AI targeting system called TITAN (for "Tactical Intelligence Targeting Access Node"). According to Palantir, TITAN is a "next-generation Intelligence, Surveillance, and Reconnaissance ground station enabled by Artificial Intelligence and Machine Learning to process data received from Space, High Altitude, Aerial and Terrestrial layers." Although designed for use by the US Army, it's possible that the company could test prototypes against Palestinians in Gaza. "How precise and accurate can you know a system is going to be unless it's already been trained and tested on people?" said Catherine Connolly of the Stop Killer Robot coalition, which includes Human Rights Watch and Amnesty International.

In 2024, Norway's Storebrand Asset Management divested from Palantir, citing concerns over its technology's potential role in violating international humanitarian law and human rights in the context of Israel's military actions in Gaza.

Teledyne Technology

US8793601050 TELEDYNE TECHNOLOGIES INC

Shareholding more than doubled from £591,616 (Sept 23) to £1,334,347, after October the 7th and continues to be held at **USD 1,191,503** (Sept 24) after the ICJ ruling.

An American industrial conglomerate that specialises in sophisticated military technology

- **Weapons export licenses:** Teledyne holds licenses for exporting weapons to both Israel and India, with their surveillance and targeting systems being used in the repression and killing of indigenous Palestinians and Kashmiris.

- **Production of image sensors and radar technologies:** Teledyne produces image sensors for military applications and radar technologies along the borders of the occupied West Bank and Gaza.
- **Supply chain for F-35 fighter jets:** Teledyne CML, a subsidiary of Teledyne Technologies, is the single-largest exporter of weaponry from Britain to Israel, and supplies parts for the F-35 fighter jet program, which has been used by Israel in its military operations.
- **Export of missile products:** Teledyne Defence and Space has been involved in the procurement of missile products by Israel, including the AGM-Harpoon, AIM-120 AMRAAM, and AGM-114 Hellfire missiles, which have been deployed by Israel against Gaza including reportedly the later was used to strike Al-Shifa Hospital.¹¹
- **Long-standing role::** Teledyne has been supplying armed drones to Israel since at least 1973.¹²



Honeywell International Inc

US4385161066

HONEYWELL INTL INC

Shareholding was tripled after October the 7th from £3,182,294 (Sept 23) to £9,251,945 (Dec 23) and continues to be held at **USD 6,074,447** as of Sept 2024.

¹¹ <https://www.thecanary.co/trending/2024/04/02/palestine-action-teledyne/>

¹² https://www.pbs.org/wgbh/nova/spiesfly/uavs_11.html

a U.S.-based multinational conglomerate, has been implicated in the Gaza conflict through the provision of components used in Israeli weapons. Investigations have revealed that Honeywell-manufactured parts were found in munitions deployed during attacks in Gaza. For instance, in June 2024, an Al Jazeera analysis identified Honeywell's inertial measurement units (IMUs) in missile fragments recovered from a United Nations-run school in Nuseirat, Gaza, following an Israeli airstrike. These components are integral to the guidance systems of precision munitions. Despite these findings, Honeywell has not publicly addressed its involvement or the use of its products in the Gaza conflict.

Northrop Grumman Corp

US6668071029 NORTHROP GRUMMAN CORP

Shareholding more than doubled from £1,146,884 (Sept 23) to £2,417,395, after October the 7th and continues to hold **USD 1,826,169** as of Sept 2024.

Northrop Grumman Corporation, a prominent U.S. military contractor, has supplied Israel with various military technologies and systems. Notable contributions include:

- **120mm Tank Ammunition:**
 - Supplier for Israel's August 2024 order of 32,739 120mm tank cartridges, consisting of 120mm M1147 High Explosive Multi-Purpose with Tracer (HEMP-T) cartridges and/or 120mm M830A1 High Explosive Multi-Purpose Anti-Tank (MPAT) with Tracer cartridges.⁹
- **Apache Helicopter Upgrades:**
 - Northrop Grumman has been contracted to modernize Israel's AH-64A Apache helicopters to the AH-64D Apache Longbow configuration. These upgrades enhance the helicopters' targeting and combat capabilities.
- **Advanced Radar and Surveillance Systems:**
 - Northrop Grumman has supplied Israel with sophisticated radar and surveillance technologies, used to enforce the illegal annexation of the West Bank.
- **Sa'ar 5 Class Corvettes:**
 - The company supplied the Israeli Navy with Sa'ar 5 Class corvettes, heavily armed missile ships used to enforce Israel's naval blockade of the Gaza Strip.

They are the producers of the "Volcano" rapid land mine dispensing system.¹³

¹³ <https://thedefensepost.com/2023/07/03/taiwan-volcano-mine-dispensing/>

Rheinmetall AG

DE0007030009, DE000A30V8S3, DE000A30V8T1 RHEINMETALL AG

Shareholding more than quadrupled from £119,067 (Sept 23) to £569,540, after October the 7th and then further doubled in Q1 2024 as the ICJ ruled a plausible genocide was being committed, Devons share of the holding is EUR 906,000 as of June 2024. **EUR 379,447** as of Sept 2024

In Q1 2024 convertible bonds were added which help finance the company. The value of exposure **EUR 63,905** as of Sept 2024.

Rheinmetall AG, a German military manufacturer, has supplied many military products to Israel. Notable contributions include:

- **120mm Tank Ammunition:** In January 2024, Germany approved Israel's request for 10,000 rounds of 120mm tank ammunition produced by Rheinmetall. This ammunition is compatible with Israel's Merkava main battle tanks which have been heavily deployed in Gaza including documented attacks on hospitals and other protected sites.
- **Automated Howitzer Systems:** Collaborating with Israel's Elbit Systems, Rheinmetall has worked on developing an automated 155mm L52 wheeled self-propelled howitzer.
- **Loitering Munitions:** Rheinmetall partnered with Israeli company UVision to develop and market loitering munitions, such as the Hero-400EC which can loiter for 120 minutes while seeking a target using algorithmic (AI) targeting capabilities.



"UVision Hero-30" by Reise Reise, licensed under CC BY-SA 4.0. Available at [Wikimedia Commons](#). No changes made.

Boeing

US0970231058

BOEING CO

Devon's fund held **USD 138,421** as of June 2024. No shares held as of Sept 2024.

A leading U.S. aerospace and military company, has been a key supplier of military aircraft to Israel for several decades. The company is also a major supplier of explosive ordnance to Israel.

Military Aircraft and Equipment:

- **F-15 Fighter Jets:** Boeing has supplied Israel with various models of the F-15 fighter jet, including the F-15I Ra'am, tailored to meet the specific requirements of the Israeli Air Force (IAF). In August 2024, the U.S. approved the sale of 50 new F-15IA fighters to Israel, along with 25 upgrade kits for existing F-15I aircraft, in a deal valued at approximately \$18.8 billion. This agreement also includes engines and advanced radars, aiming to enhance Israel's military capabilities amid regional tensions.¹⁴
- **AH-64 Apache Helicopters:** Boeing has delivered AH-64 Apache attack helicopters to Israel, providing advanced aerial combat and reconnaissance capabilities.
- **Ordnance:** MK-82, MK-83 and MK-84 2,000lb bombs, Joint Direct Attack Munitions (JDAM), GBU-39 Small Diameter Bombs and Harpoon Missiles.⁷

Israel's use of F-15 fighter jets and Apache helicopters in bombing operations over Gaza and Lebanon has drawn significant international criticism and allegations of violations of international humanitarian law. Key claims include:

- Human rights organizations, such as Amnesty International, have documented instances where Israeli airstrikes, including those conducted by F-15 jets, resulted in mass civilian casualties. These reports highlight attacks that allegedly failed to distinguish between military targets and civilian areas, leading to the destruction of homes and loss of civilian lives.
- The United Nations and various human rights groups have called for investigations into Israel's airstrikes, suggesting that some actions may constitute war crimes. The focus is on whether the bombings adhered to the principles of distinction and proportionality under international humanitarian law.
- Specific incidents, such as the Israeli airstrike on a residential building in Beit Lahiya, northern Gaza, resulted in significant civilian casualties, including children. The U.S. described the incident as "horrifying," and the UN called for a thorough investigation.
- Reports indicate that approximately 40-45% of the air-to-ground munitions used by Israel in Gaza have been unguided "dumb bombs." Experts note that while these can achieve heightened accuracy with specific tactics, their use in densely populated areas raises concerns about increased risks to civilians.

¹⁴ <https://www.dsca.mil/press-media/major-arms-sales/israel-f-15ia-and-f-15i-aircraft>

TRANSDIGM Group Inc

US8936411003, US89364MCD48, US893647BR70, US89364MCA09 TRANSDIGM GROUP INC

LGIM increased the shareholding in the Paris fund by more than a quarter of a million pounds from £718,732 (Sept 23) to £1,011,441, after October the 7th, the Paris fund continues to hold **USD 1,267,567** as of Sept 2024

In Q1 2024 Brunel quadrupled Devon's exposure by adding USD 3,152,380 of bonds to the Multi-Asset Credit (MAC) increasing to **USD 4,242,113** as of Sept 2024.

its exposure after the ICJ ruling. Assisting the company with a multimillion-dollar purchase of interest-bearing bonds and a Term Loan.

A leading global designer, producer, and supplier of components for use on military aircraft.

- **Military Contracts:** TransDigm has supplied spare parts for Apache helicopters and F-16 aircraft, both of which are integral to the Israeli Air Force's fleet. This includes components critical to the operation and maintenance of these platforms.
- **Product Portfolio:** The company's extensive range of products includes actuators, controls, pumps, valves, and cockpit displays, many of which are utilized in military aircraft operated by Israel.

BAe Systems

GB0002634946 BAe SYSTEMS PLC

Shareholding decreased in Q4 2023 but LGIM then made a multimillion-dollar re-investment in Q1 2024 after the ICJ ruling and Devon PF holding £1,480,483 as of June 2024, increasing to **£2,152,318** as of Sept 2024

BAe Systems, a major British military contractor, supplies Israel with various military components and technologies, notably for the F-35 fighter jet program. Key contributions include:

- **F-35 Fighter Jet Components:** BAe Systems manufactures approximately 15% of each F-35 aircraft, including the rear fuselage and tail sections. These components are integral to the aircraft's structure and performance. Israel has procured 75 F-35 jets, with BAE's contributions valued at over £300 million since 2016.
 - The same legal concerns and implications as the F-15 jet relate to the F-35 jets which have been used to drop 2,000-pound GBU-31 Joint Direct Attack Munition (JDAM) bombs in urban areas of Gaza and Lebanon.



Thales

FR0000121329 THALES SA

Shareholding was more than tripled after October the 7th from £262,910 to £906,144 by December 2023. The fund continues to hold **EUR 749,497** as of Sept 2024

The French military conglomerate owns Get SAT, an Israeli company specializing in compact satellite communication (SATCOM) terminals, provides advanced communication solutions that are utilized by the Israel Defence Forces (IDF). This includes live video feeds from unmanned aerial vehicles (UAVs) and other reconnaissance and targeting assets use in Gaza. Reports show shipments of drone equipment for Hermes 900s as recently as May 2024.¹⁵

Thales provided essential heads-up-displays and navigation equipment to the Russian Airforce prior to the invasion of Ukraine. (More on this aspect in Section 10.9.d)

Howmet Aerospace

US4432011082 HOWMET AEROSPACE INC

Shareholding was doubled after October the 7th from £251,267 to £491,981. The value of holdings increased to USD 626,70 following the ruling of the ICJ and again in Q2 to be **USD 757,408** as of June 2024 and **USD 910,129** by Sept 2024.

Howmet Aerospace, a leading manufacturer of aerospace components, supplies parts used in various military aircraft, including the F-35 Lightning II fighter jet. Israel operates the F-35

¹⁵ <https://disclose.ngo/en/article/france-equips-israeli-armed-drones-as-the-war-rages-in-gaza>

as a key component of its air force. Specifically, Howmet's fastening systems are utilized in the construction of the F-35, and their engine bolts are exclusively produced in Leicester, UK.

Saab AB

SE0000112385, SE0021921269 SAAB AB

Shareholding was increased from 2,918 shares before October 7th to 7,465 shares by December 2023. The value of holdings rising from £49,766 to £124,776. Devon continues to hold **SEK 157,260** as of Sept 2024

Saab supply Israel the Carl-Gustaf system, a shoulder-fired anti-tank and anti-personnel weapon.



"Carl Gustav M4" by Reise Reise, licensed under CC BY-SA 4.0. Available at [Wikimedia Commons](#). No changes made.

HEICO Corp

US4228062083, US4228061093 HEICO CORP

Shareholding rose 25% between Q3 2023 and Sept 2024 to be **USD 353,852**

A major manufacturer of aerospace and defence components, supplying military parts to General Dynamics, Lockheed Martin for the F-35 program, Northrop Grumman, Raytheon (RTX) components for their missile systems which are sold to Israel, and Boeing among others.

HEICO subsidiaries include Blue Aerospace, the worldwide distribution partner for General Dynamics Ordnance and Tactical Systems, supplying products like the M61A1 Weapons System and the Universal Ammunition Loading System (UALS) seen in use by Israel.

StandardAero

US26812CAK27, US26812CAL00 StandardAero

New multimillion dollar Senior Secured (Asset) Secured Term Loans purchased by Brunel in Q1 2024 following the ICJ ruling, nearly doubling during Q2 2024 to leave Devon's share **USD 767,818** as of Sept 2024.

Provides maintenance, repair, and overhaul (MRO) services for engines used in Lockheed Martin C-130 as supplied to Israel.

StandardAero also collaborates with Lockheed Martin's subsidiary, Derco, to offer Pratt & Whitney F100 engine repair services to F-16 operators worldwide.

Ametek

US0311001004 AMETEK INC

Nearly a million pounds was added to Devon's holding following October 7th from £1,380,561 to £2,235,150. The fund continues to hold **USD 2,157,613** as of Sept 2024.

Ametek Airtechnology, a subsidiary of Ametek, specialises in designing, developing and manufacturing custom-made thermal and motion control solutions for weapons including missiles, military vehicles and fighter jets. Their products are used for Israel's F-35 fighter jets. Ametek's subsidiary United Electronic Industries lists Elbit Systems as a "valued customer" – a connection which was also confirmed through sightings of deliveries to Elbit's Shenstone-based subsidiary, UAV Engines Ltd.

Spirit Aerosystems

US85205TAR14 Spirit Aerosystems Inc

No exposure listed before the ICJ ruling, USD 371,034 held as of March 2024, more than tripling to USD 1,246,335 as of June 2024, no holdings as of Sept 2024

Spirit AeroSystems, recently purchased by Boeing, is a leading manufacturer of aerostructures, supplying components for various military aircraft. The company provides fuselage sections and other parts for the F-15 and F-16 fighter jets, both of which are integral to the Israeli Air Force (IAF)

CATERPILLAR INC

US1491231015

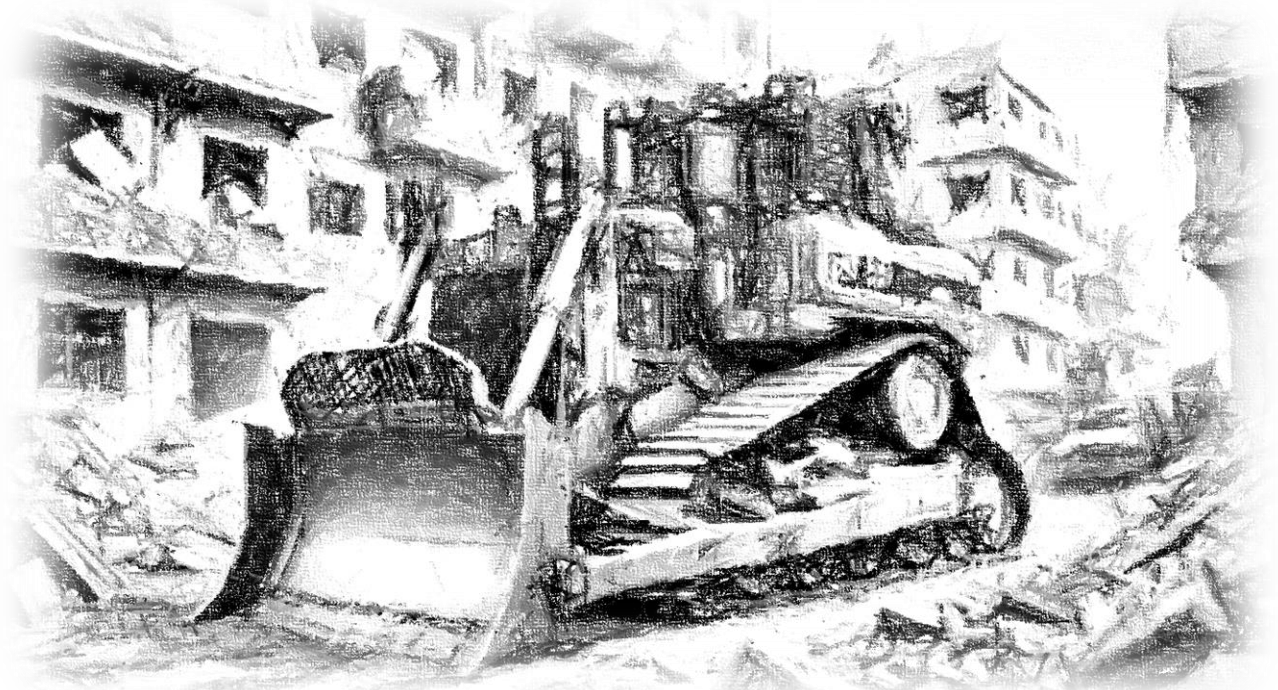
CATERPILLAR INC

Shareholding was nearly tripled after October the 7th from £2,606,807 to £6,671,673. Devon continues to hold USD 7,290,426 as of June 2024. No holdings showing as of Sept 2024.

A leading manufacturer of construction and mining equipment, supplies Israel with various heavy machinery, notably the Caterpillar D9 armoured bulldozer

The Israel Defence Forces (IDF) have extensively utilized the Caterpillar D9 armoured bulldozer in Gaza and the West Bank for various military operations.

- Human rights organizations have documented IDF use D9 bulldozers to demolish homes, agricultural lands, and infrastructure in Gaza. Such actions have been criticized as collective punishment and potential violations of international humanitarian law.
- The lack of distinction between military targets and civilian property during demolition operations has raised concerns about the protection of non-combatants.
- D9 Drivers have admitted to operating the bulldozers over human bodies, both deceased and alive.¹⁶
- D9 bulldozers are documented as being used to obstruct access medical facilities and humanitarian aid routes, exacerbating the humanitarian crisis in Gaza.



¹⁶ <https://www.middleeasteye.net/trending/cnn-slammed-article-Israeli-army-whitewashing-gaza>

Safran SA

FR0000073272, FR0014003Z32, FR0000073272 SAFRAN SA

As at September 2023 Brunel held £3,424,486 of stock for Devon in its actively traded account. In Q1 2024 as the ICJ publicised its ruling of plausible genocide approximately €308,000 was added to the Paris Aligned fund by LGIM for Devon, and €97,000 of bonds was added to the MAC fund by Brunel.

All holdings of Safran saw slight losses by Q2 and Q3 2024 but continue to be held EUR 3,973,261 as of Sept 2024.

Safran partners with two Israeli weapons manufacturers; Elbit systems to make the Hermes 450 and Hermes 900 drones¹⁷, and Rafael Advanced Defense Systems on a number of military projects including targeting equipment which promised “improved target neutralization.”¹⁸

Safran provided Russia’s military jets with essential navigation equipment which continues to be serviced through an intermediary in Kazakhstan.¹⁹ (More on this aspect in Section 10.9.d)

Bombardier Inc

US097751CB51, US097751BX80, US097751CC35, US097751CB51, US097751CA78
BOMBARDIER INC

No recent exposure reported before the ICJ ruling but USD 371,034 purchase of Senior Unsecured Notes by Brunel during Q1 2024, which was then more than tripled during Q2 2024 to **USD 1,262,700** as of Sept 2024.

A Canadian aerospace company, supplies Israel with aircraft for conversion to military use by Israel Aerospace Industries (IAI).

Motorola

US6200763075 MOTOROLA SOLUTIONS INC

Holding increased from £929,324 to £1,411,661 after October the 7th. Holding **USD 1,490,121** as of Sept 2024

Motorola Solutions provides technology and services that support Israeli military operations in Gaza and the West Bank. Key involvements include:

¹⁷ <https://aviationweek.com/elbit-safran-plan-uav-joint-ventureelbit-safran-plan-uav-joint-venture>

¹⁸ <https://www.edrmagazine.eu/rafael-and-safran-team-up-on-fire-weaver-and-moskito-ti-targeting-solution>

¹⁹ <https://defence-blog.com/french-avionics-keep-russian-su-30-flying-despite-sanctions/>

- **Surveillance Systems:** The company supplies advanced surveillance equipment, such as the "MotoEagle" Wide Area Surveillance System, which is utilized along the West Bank separation wall and in military bases, including areas surrounding Gaza. This system comprises radars and cameras designed to detect human movement.
- **Communication Equipment:** Motorola Solutions provides encrypted communication systems to the Israel Defence Forces (IDF), facilitating secure coordination during military operations, including those in Gaza. These systems are integral to the IDF's operational effectiveness.
- **Military Smartphones:** The company has developed and supplied encrypted smartphones, such as the Lex M20, for the Israeli military. These devices offer secure communication channels and are used in various military operations, potentially including those in Gaza.

These contributions have led to criticism from human rights organizations, which argue that Motorola Solutions' technologies support activities associated with the occupation and military actions in Gaza. Such involvement has prompted calls for divestment and increased scrutiny regarding the company's role in the region.

In 2020, the United Nations Human Rights Council included Motorola on a published database listing companies involved in activities related to illegal Israeli settlements



Hewlett Packard

US42824C1099

HEWLETT PACKARD ENTERPRISE

Shareholding was quadrupled in Q4 2023, after October the 7th. Following the ruling of the ICJ holdings were increased again and in Q2 a further multimillion-dollar purchase was added by LGIM to the Paris fund holdings. **USD 1,370,986** in the Devon fund as of Sept 2024

Over the past year, Hewlett-Packard (HP) companies have continued to face scrutiny for their involvement in providing technology and services that support Israeli operations affecting Palestinians, including those in Gaza. Notable developments include:

- **Biometric Identification Systems:** HP has been reported to supply biometric identification systems used at Israeli military checkpoints, which control Palestinian movement, including access to and from Gaza. These systems are integral to the enforcement of movement restrictions.
- **IT Infrastructure for Israeli Institutions:** HP provides IT infrastructure and services to various Israeli institutions, including the military and prison services. These services support operations that have direct implications for Palestinians in Gaza.
- **IT Infrastructure for the Israeli Navy:** HP has supplied IT infrastructure to the Israeli Navy, which enforces the naval blockade of Gaza. This blockade restricts the movement of goods and people, contributing to the humanitarian situation in the region.

Calls for Boycott and Divestment: Human rights organizations have intensified campaigns urging boycotts and divestments from HP companies, citing their complicity in actions that may violate international law and contribute to the humanitarian situation in Gaza.

AAR Corp

US0003611052

AAR CORP

No shares were listed before the June 2024 holdings statement meaning since the ICJ ruling, a new USD 957,169 investment was made by Brunel for Devon in its actively traded BRUNEL SMALLER COMPANIES EQUITIES FUND. Holding **USD 813,423** as of Sept 2024.

AAR Corp, a prominent provider of aviation services, supplies the Israeli military with various products and services to enhance its operational capabilities. Key contributions include:

- **Aircraft Components and Parts:**
 - AAR offers a wide range of aircraft components and replacement parts, supporting the maintenance and operational readiness of Israel's military air fleets. This includes parts for both fixed-wing aircraft and helicopters.
- **Maintenance, Repair, and Overhaul (MRO) Services:**

- The company provides comprehensive MRO services, including airframe maintenance, landing gear services, and component repair.
- **Supply Chain Management:**
 - AAR delivers supply chain solutions to Israel's military, including inventory management and logistics support, to streamline the procurement and distribution of aviation parts.
- **Technical Training and Support:**
 - The company offers technical training programs for maintenance personnel, enhancing the skill set of Israel's military aviation workforce. Additionally, AAR provides field support services to assist with on-site maintenance and operational challenges.

Embraer SA

BREMBRACNOR4 EMBRAER SA

No shares were listed before the June 2024 holdings statement meaning a new investment of BRL 562,507 was made since the ICJ ruling. Increasing to **BRL 891,770** as of Sept 2024

Embraer, a Brazilian aerospace company, collaborates with Israel primarily through partnerships and joint ventures, focusing on specialized military aircraft development.

Textron

US8832031012 TEXTRON INC

Holdings in the Paris fund rose from £207,919 Sept 2023 to **USD 281,662** as at Sept 2024

The Israeli Air Force 100 Squadron, which has supported Israel's genocidal attacks on Gaza, uses Textron aircraft, including the Beechcraft King Air, Queen Air, RC12-D Guardrail, and Bonanza A-36, mostly for reconnaissance, freight, and training purposes.

These aircraft reconnaissance missions include participating in so-called "roof-knock" bombings, a warning method in which Israeli aircraft strike a residential building with relatively small missiles before blowing up the building with larger bombs.

Leidos

US5253271028 LEIDOS HOLDINGS INC

Holdings tripled following October 7th, from 6,400 shares Sept 2023 to 20,177 shares by Dec 2023. Holdings valued **USD 830,833** as of Sept 2024 in the Paris fund.

A prominent American defence, aviation, and information technology company, has established a significant presence in Israel through various collaborations and projects including the data center for the Israel Defense Forces, known as the "Fortress of David",

which supports the IDF's intelligence gathering, analysis, and operational planning during their assault on Gaza.

Since 2017, Leidos Israel has partnered with Israel Aerospace Industries and TSG IT Advanced Systems to consolidate and transfer the IDF's computer infrastructure into centralized data centers located in the Negev region.

Section 3: Exposure related to illegal occupation

With disturbing echoes of Britain's colonial history, most of the exposure in this section is in the form of bonds.

Growing global objection to the illegal settlement and annexation of Palestinian territories has led to divestment actions by entities such as Ireland's sovereign investment fund, which, in April 2024, decided to divest from Hapoalim and Leumi banks and other Israeli companies.

In the same period, Brunel were making new purchases of bonds which support Israeli settlement in the OPT: Building materials, financing, communications, railways on occupied land and exploitation of mineral wealth by the occupying entity. The bonds of the next 8 companies were all purchased in Q1 and Q2 2024.

Bank Hapoalim & Bank Leumi Bonds

IL0066204707 BANK HAPOALIM BM, **USD 83,210** as of Sept 2024

IL0060404899 BANK LEUMI LE-ISRAEL CORP, **USD 85,130** as of Sept 2024

Both are Subordinated Unsecured Bonds purchased Q1 2024.

These two banks control over 60% of Israel's banking assets. It is telling that these bonds offer low returns compared to the broader market, at just 3.255% and only pay interest annually. This suggests there may be more to the decision than purely financial motives.

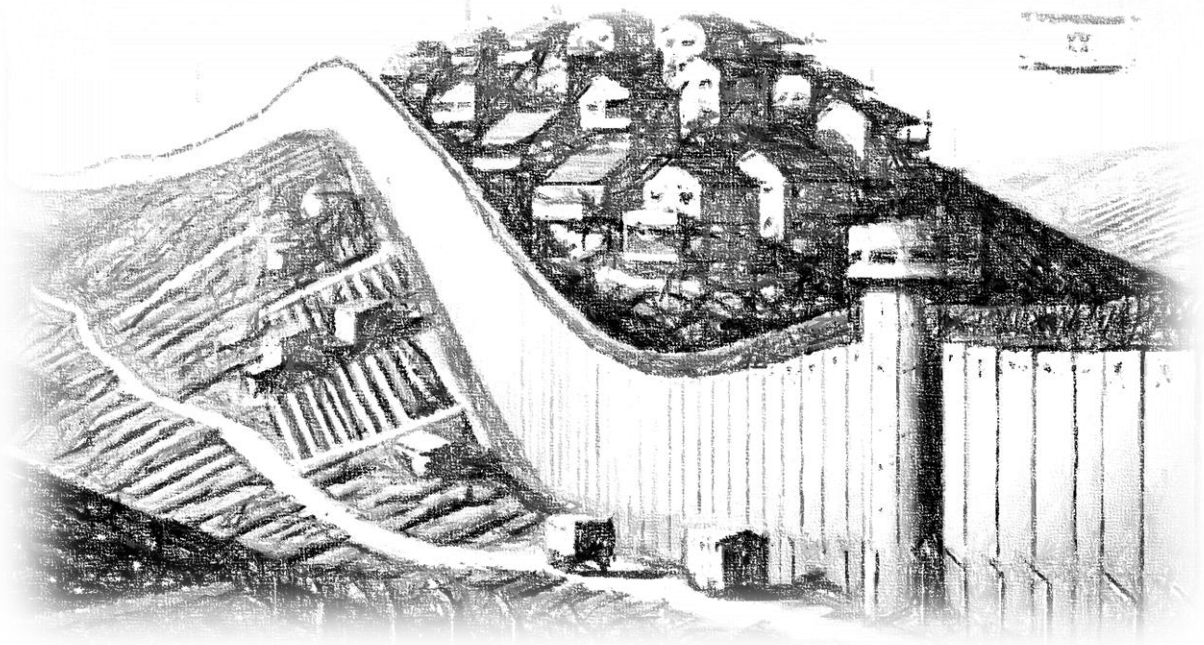
Buying bonds of these banks puts the LGPS scheme members earnings in the hands of the bank's customers in Israel who, the UN report, use that money to finance illegal settlement building.

Devon fund has lent £170,000 to the 2 banks via bond purchases. Devon is 1.67% of the total LGPS. If other funds have an equivalent amount, the LGPS overall is in real terms lending Israeli settlers over £8 million to illegally occupy in Palestine.

Brunel's Israeli bank holdings as of June 2024

World Developed Equity Index Fund	IL0006625771	Bank Hapoalim	£209,410
World Developed Equity Index Fund	IL0006046119	Bank Leumi	£333,738
World Developed Equity Index Fund	IL0005930388	First Itnl Bank Israel	£34,946
World Developed Equity Index Fund	IL0006912120	Israel Discount Bank	£110,073
World Developed Equity Index Fund	IL0006954379	Mizrahi Tefahot Bank	£83,464
Low Volatility Global Equity	IL0006625771	Bank Hapoalim	£1,440,070

Scientific Beta Multi-Factor Developed	IL0006625771	Bank Hapoalim	£183,209
Multi-Asset Credit	IL0066204707	Bank Hapoalim	£360,750
Multi-Asset Credit	IL0060404899	Bank Leumi	£371,238
Total:			£3,126,898



Leviathan & Energean Bonds

IL0011677825 LEVIATHAN BOND LTD, No holding shown Sept 2024

IL0011736654 ENERGEAN ISRAEL FINANCE LTD, **USD 203,945** as of Sept 2024

Both are Senior Secured Bonds added to Multi-asset credit fund Q1 2024

The bonds finance the exploitation of natural gas in areas also claimed by Lebanon as being within their territorial waters. Devon alone holds £281,145 of bonds as at June 2024. Assuming again other funds in the LGPS have similar it will hold £16,835,000 of bonds.

Alstom Bond

FR001400Q7G7 Alstom SA

EUR 247,378 in Bonds added in Q2 2024 by Brunel of interest bearing Perpetual Subordinated Bond issued 29th May 2024, **EUR 246,882** as of Sept 2024

A French multinational company specializing in rail transport, has been involved in projects that connect Israeli settlements in the occupied West Bank to other parts of Israel. Notably, Alstom participated in the construction and maintenance of the Jerusalem Light Rail, which links West Jerusalem with settlements such as Pisgat Ze'ev and French Hill in East Jerusalem. These areas are considered occupied territories under international law, and the establishment of settlements there is widely regarded as illegal.

In 2020, the United Nations Human Rights Council published a database listing companies involved in activities related to Israeli settlements; Alstom was among those named.

Additionally, in 2021, Norway's largest pension fund, KLP, excluded Alstom from its investment portfolio due to its links to Israeli settlements in the West Bank.²⁰

These associations have led to criticism and calls for accountability regarding Alstom's role in facilitating infrastructure that supports the existence and expansion of settlements considered illegal under international law.

Altice Bonds

US02154CAH60, XS2102493389, XAL0178UAL07, XS2390152986, XS2332975007, XS2232102876, XAF6628DAP96 Altice Europe and its subsidiaries inc SFR (Altice France SA)

No exposure listed prior to the ICJ ruling then EUR 2,015,950 of Bonds added in Q1 2024. The fund continues to hold **EUR 1,060,013** as of Sept 2024. Senior Secured and Unsecured Notes, some with high credit risk, and an Extended Term Loan.

Altice Europe N.V., a multinational telecommunications company, has been implicated in activities that support Israeli settlements in the occupied West Bank. In February 2020, the United Nations Human Rights Council published a database listing companies involved in specific activities related to Israeli settlements; Altice was included in this list. The company's involvement pertains to the provision of telecommunications services and infrastructure that support the maintenance and existence of these settlements. Subsequently, in July 2021, Norway's largest pension fund, KLP, divested from Altice due to its links to Israeli settlements, citing concerns over potential complicity in violations of international law.

²⁰ <https://www.klp.no/en/corporate-responsibility-and-responsible-investments/exclusion-and-dialogue/Decision%20to%20exclude%20companies%20with%20links%20to%20Israeli%20settlements%20in%20the%20West%20Bank.pdf>

Cemex Bonds

USP2253TJS98, USP2253TJT71 Cemex SAB

No holdings before the ICJ ruling. USD 592,422 invested after (Mar 24) The fund continues to hold **USD 473,911** as of Sept 2024.

A global building materials company, through its Israeli subsidiary, Readymix Industries (Israel) Ltd., supplies concrete for the construction of Israel's separation wall, military checkpoints, and infrastructure within the illegal settlements.

The company's involvement in these activities has led to divestment actions by several institutional investors and ongoing campaigns urging Cemex to cease operations linked to the settlements.

CNH Industrial Shares & Bonds

NL0010545661 CNH INDUSTRIAL NV

US12592BAQ77 CNH INDUSTRIAL CAPITAL LLC Bond

Holding in the Paris fund increased from £1,389,460 to £ 1,655,650 following October 7th and continues to be held **USD 1,687,759** as of Sept 2024

Brunel added a Senior Unsecured Note / Bond of USD 1,403,700 to Devons holding as of June 2024. Valued at **USD 915,697** as of Sept 2024

A multinational company that produces construction machinery and vehicles. Its machinery has been used in the construction of illegal settlements, infrastructure, industrial zones and the illegal separation wall. Furthermore, CNH machinery has been used to demolish Palestinian homes in the villages of Khirbet M'fakara, Susya and Bir al-'Id in the occupied West Bank. CNH EX355 excavators were used during the construction of the illegal Israeli outpost Leshem. CNH machinery was documented in the construction of the separation wall in the Palestinian villages of Bidu, Bil'in and Ni'lin. CNH also owns the brand Iveco, which has been used in the demolition of Palestinian houses.

Expedia Group, TripAdvisor, Booking.com & AirBNB

US30212P3038 EXPEDIA GROUP INC

Shareholding increased by 250% in Q4 2023, in the Paris fund and continued to increase each quarter to hold USD 453,096 as of June 2024, Decreasing to **USD 335,943** as of Sept 2024

US8969452015 TRIPADVISOR INC

Shareholding was nearly doubled in a Brunel active fund between Q4 2023 and Q2 2024 and continues at an **USD 1,487,808** as of Sept 2024

US0090661010 AIRBNB INC

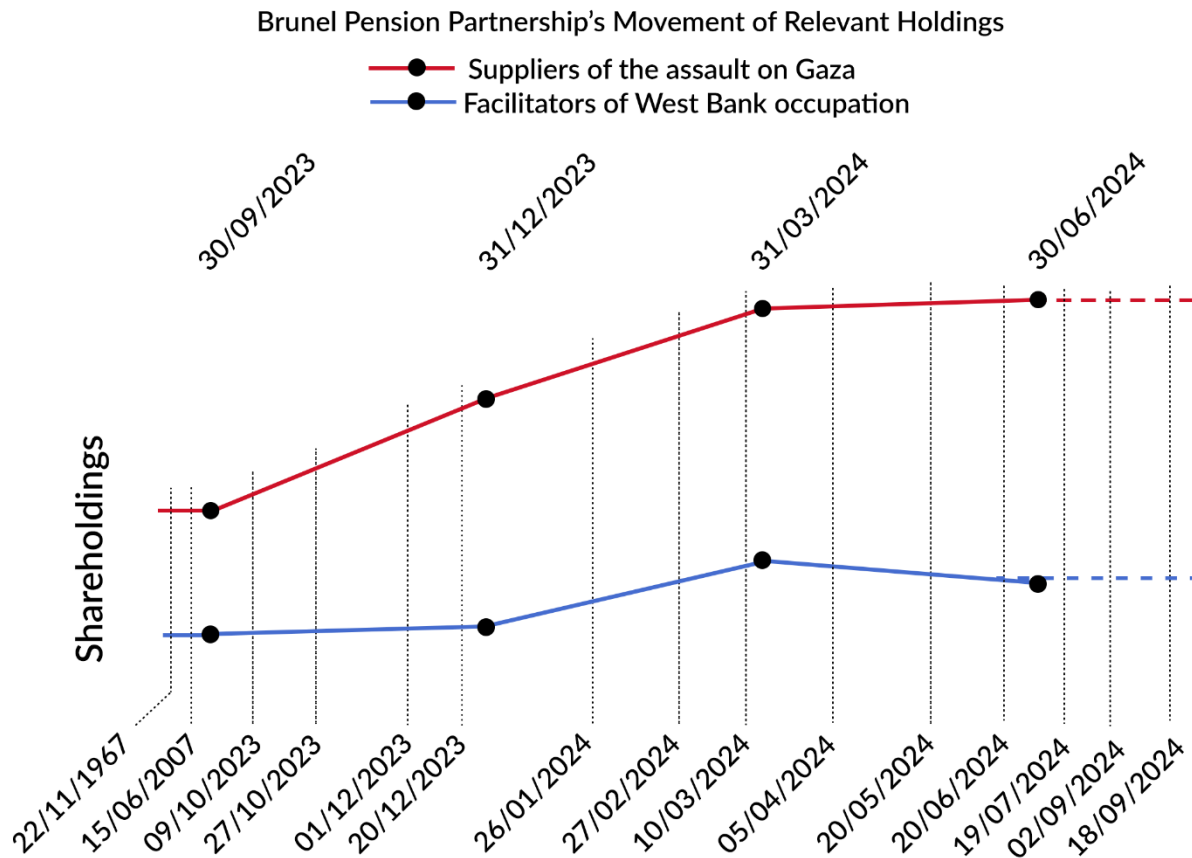
Shareholding was increased in the Paris fund Q4 2023 and Q1 2024 and **USD 1,059,225** continues to be held as of June 2024

US09857L1089 BOOKING HOLDINGS INC

Shareholding was nearly doubled between September 2023 and Sept 2024, Devon holds **USD 2,926,859** in the Paris fund as of Sept 2024. And **USD 1,728,461** in a Brunel active fund

The travel companies may be breaching international law by listing properties in Israeli settlements within occupied Palestinian territories, which are deemed illegal under international law. By promoting tourism in these settlements, the companies are contributing to their economic sustainability and normalization, actions that human rights organizations argue support the violation of Palestinian rights. This involvement has led to these company's inclusion in UN reports on businesses operating in settlements, indicating complicity in sustaining activities associated with breaches of international humanitarian law.

Section 4: Exposure Vs Events



22/11/1967	The first of many similar resolutions, UN Security Council Resolution 242 forms the foundation for the international view that Israeli settlements and occupation are unlawful.
15/06/2007	Israel began its continuing siege of the Gaza strip. Condemned as illegal by UN Human Rights Council, the UN Security Council and the International Committee of the Red Cross.
09/10/2023	Israel begins extensive airstrikes across Gaza.
27/10/2023	Israel initiated a full-scale ground invasion of Gaza.
01/12/2023	The ICC announced an investigation into potential war crimes.
20/12/2023	The UN Security Council held an emergency session to address the escalating crisis.
26/01/2024	The ICJ decides there is a plausible case that Israel is conducting a genocide and imposes emergency measures.
27/02/2024	Israel fails to abide by the ICJ's emergency measures.
10/03/2024	The ICC released preliminary findings on potential war crimes.

05/04/2024	UN Human Rights Council adopted a resolution demanding that Israel immediately lift its blockade on the Gaza Strip and all other forms of collective punishment. The resolution called for all states to cease the sale, transfer, and diversion of arms, munitions, and other military equipment to Israel.
20/05/2024	ICC request arrest warrants for heads of the Israel Government and military for war crimes and crimes against humanity.
20/06/2024	UN experts called for an immediate halt to arms transfers to Israel, stating that such transfers may constitute serious violations of international humanitarian laws and risk complicity in international crimes, possibly including genocide.
19/07/2024	ICJ declares Israel's occupation of Palestinian territories unlawful and that its laws and policies against Palestinians amount to racial segregation and apartheid.
02/09/2024	British government refused arms licenses to Israel because of a "clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian law"
18/09/2024	UN General Assembly adopted a resolution that Israel must end its unlawful presence in the West Bank and East Jerusalem within 12 months.

It is apparent from the graph that Brunel and LGIM failed to respond ethically to the well-publicised judgements relating to the assault on Gaza and escalating situation in the West Bank and now Lebanon.

An apparent disregard for ethics, or a systemic lack of oversight, has allowed the fund's exposure to double overall and, in some cases, quadruple holdings of shares in companies well documented to be supplying weapons to the Israeli military during their campaign against Gaza.

Most holdings of military suppliers increased but some, such as the tank manufacturers Renk Group and L3Harris were newly added to the fund only after the ICJ ruling of plausible genocide and the UN call for a halt of weapons sales to Israel.

The outlook of Rheinmetall shares was already very positive but Brunel help finance the company by adding multiple bonds to its Multi-Asset Credit Fund in February 2024.

Section 5: Exposure within Devon's portfolio

PARIS ALIGNED WORLD DEVELOPED EQUITY	US0090661010	AIRBNB INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	US0311001004	AMETEK INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	GB0002634946	BAe SYSTEMS
PARIS ALIGNED WORLD DEVELOPED EQUITY	US0970231058	BOEING CO
PARIS ALIGNED WORLD DEVELOPED EQUITY	US09857L1089	BOOKING HOLDINGS INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	US1491231015	CATERPILLAR INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	NL0010545661	CNH INDUSTRIAL NV
PARIS ALIGNED WORLD DEVELOPED EQUITY	US30212P3038	EXPEDIA INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	US3695501086	GENERAL DYNAMICS
PARIS ALIGNED WORLD DEVELOPED EQUITY	US4228062083	HEICO CORP
PARIS ALIGNED WORLD DEVELOPED EQUITY	US4228061093	HEICO CORP
PARIS ALIGNED WORLD DEVELOPED EQUITY	US42824C1099	HEWLETT PACKARD
PARIS ALIGNED WORLD DEVELOPED EQUITY	US4385161066	HONEYWELL INTL INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	US4432011082	HOWMET AEROSPACE INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	US5024311095	L3Harris Technologies
PARIS ALIGNED WORLD DEVELOPED EQUITY	US5253271028	Leidos Holdings
PARIS ALIGNED WORLD DEVELOPED EQUITY	US6200763075	MOTOROLA SOLUTIONS INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	US6668071029	NORTHROP GRUMMAN CORP
PARIS ALIGNED WORLD DEVELOPED EQUITY	US69608A1088	PALANTIR TECHNOLOGIES INC
PARIS ALIGNED WORLD DEVELOPED EQUITY	DE0007030009	RHEINMETALL AG
PARIS ALIGNED WORLD DEVELOPED EQUITY	SE0021921269	Saab AB
PARIS ALIGNED WORLD DEVELOPED EQUITY	FR0000073272	SAFRAN SA
PARIS ALIGNED WORLD DEVELOPED EQUITY	US8793601050	TELEDYNE TECHNOLOGY
PARIS ALIGNED WORLD DEVELOPED EQUITY	US8832031012	Textron Inc
PARIS ALIGNED WORLD DEVELOPED EQUITY	FR0000121329	THALES
PARIS ALIGNED WORLD DEVELOPED EQUITY	US8936411003	TRANSDIGM GROUP INC
MULTI ASSET CREDIT	FR001400Q7G7	Alstom SA
MULTI ASSET CREDIT	US02154CAH60	Altice Financing Sa
MULTI ASSET CREDIT	XS2102493389	Altice Financing SA
MULTI ASSET CREDIT	XAL0178UAL07	Altice Financing SA
MULTI ASSET CREDIT	XS2390152986	ALTICE FRANCE SA
MULTI ASSET CREDIT	XS2332975007	Altice France SA
MULTI ASSET CREDIT	XS2232102876	Altice France SA
MULTI ASSET CREDIT	IL0066204707	BANK HAPOALIM BM
MULTI ASSET CREDIT	IL0060404899	BANK LEUMI LE-ISRAEL CORP

MULTI ASSET CREDIT	US097751CB51	BOMBARDIER INC
MULTI ASSET CREDIT	US097751BX80	Bombardier Inc
MULTI ASSET CREDIT	US097751CC35	Bombardier Inc
MULTI ASSET CREDIT	US097751CA78	Bombardier Inc
MULTI ASSET CREDIT	USP2253TJS98	CEMEX SAB
MULTI ASSET CREDIT	USP2253TJT71	CEMEX SAB
MULTI ASSET CREDIT	US12592BAQ77	CNH INDUSTRIAL CAPITAL LLC
MULTI ASSET CREDIT	IL0011736654	ENERGEAN ISRAEL FINANCE
MULTI ASSET CREDIT	IL0011677825	LEVIATHAN BOND LTD
MULTI ASSET CREDIT	DE000A2YPE76	MTU Aero Engines
MULTI ASSET CREDIT	DE000A30V8S3	Rheinmetall Ag
MULTI ASSET CREDIT	DE000A30V8T1	Rheinmetall Ag
MULTI ASSET CREDIT	FR0014003Z32	SAFRAN SA
MULTI ASSET CREDIT	XAF6628DAP96	SFR (Altice France SA)
MULTI ASSET CREDIT	US85205TAR14	Spirit Aerosystems Inc
MULTI ASSET CREDIT	US26812CAK27	StandardAero
MULTI ASSET CREDIT	US26812CAL00	StandardAero
MULTI ASSET CREDIT	US893647BR70	TRANSDIGM INC
MULTI ASSET CREDIT	US89364MCA09	Transdigm Inc
RLPPC Brunel Sterling Corp Bond Fund	XS0229561831	GEN ELECTRIC
TM BRUNEL EMERGING MRKTS EQUITY	BREMBRACNOR4	EMBRAER SA
TM BRUNEL HG ALP GLB EQUITY FD	US09857L1089	BOOKING HOLDINGS INC
TM BRUNEL HG ALP GLB EQUITY FD	NL0010545661	CNH INDUSTRIAL NV
TM BRUNEL HG ALP GLB EQUITY FD	FR0000073272	SAFRAN SA
TM BRUNEL SMALLER COMPANIES EQ	US0003611052	AAR CORP COMMON STOCK
TM BRUNEL SMALLER COMPANIES EQ	DE000A0D9PT0	MTU Aero Engines
TM BRUNEL SMALLER COMPANIES EQ	DE000RENK730	RENK GROUP AG
TM BRUNEL SMALLER COMPANIES EQ	US8969452015	TRIPADVISOR INC

Value of Devon's exposure (USD)

PARIS ALIGNED WORLD DEVELOPED EQUITY	\$ 31,101,654
MULTI ASSET CREDIT (bonds)	\$ 9,540,731
RLPPC Brunel Sterling Corp Bond Fund	\$ 1,160,436
TM BRUNEL EMERGING MRKTS EQUITY	\$ 144,186
TM BRUNEL HG ALP GLB EQUITY FD	\$ 7,219,930
TM BRUNEL SMALLER COMPANIES EQ	\$ 6,089,627
Total	\$ 55,234,564

Section 7: Brunel's UN OPT complicit investments

United Nations Human Rights Council's 2020 database of companies involved in activities related to Israeli settlements in the Occupied Palestinian Territory (OPT).

AIRBNB INC	E	US0090661010	PARIS ALIGNED WORLD DEVELOPED
AIRBNB INC	E	US0090661010	World Developed Equity Index Fund
AIRBNB INC	E	US0090661010	Scientific Beta Multi-Factor Developed
AIRBNB INC	E	US0090661010	FTSE CLIMATE TRANSITION WORLD
Alstom SA	E,G	FR0010220475	WORLD DEVELOPED EQUITY INDEX
Alstom SA	E,G	FR001400Q7G7	MULTI ASSET CREDIT
Altice Financing	E	US02154CAH60	MULTI ASSET CREDIT
Altice Financing	E	XS2102493389	MULTI ASSET CREDIT
Altice Financing	E	XAL0178UAL07	MULTI ASSET CREDIT
Altice France	E	XS2390152986	MULTI ASSET CREDIT
Altice France	E	XS2232102876	MULTI ASSET CREDIT
Altice France	E	XS2332975007	MULTI ASSET CREDIT
BANK HAPOALIM	E,F	IL0006625771	World Developed Equity Index Fund
BANK HAPOALIM	E,F	IL0006625771	Low Volatility Global Equity
BANK HAPOALIM	E,F	IL0006625771	Scientific Beta Multi-Factor Developed
BANK HAPOALIM	E,F	IL0066204707	MULTI ASSET CREDIT
BANK LEUMI	E,F	IL0006046119	World Developed Equity Index Fund
BANK LEUMI	E,F	IL0060404899	MULTI ASSET CREDIT
Booking Holdings	E	US09857L1089	World Developed Equity Index Fund
Booking Holdings	E	US09857L1089	Scientific Beta Multi-Factor Developed
Booking Holdings	E	US09857L1089	Global High Alpha
Booking Holdings	E	US09857L1089	FTSE CLIMATE TRANSITION WORLD
Booking Holdings	E	US09857L1089	PARIS ALIGNED WORLD DEVELOPED
EXPEDIA INC	E	US30212P3038	World Developed Equity Index Fund
EXPEDIA INC	E	US30212P3038	Scientific Beta Multi-Factor Developed
EXPEDIA INC	E	US30212P3038	FTSE CLIMATE TRANSITION WORLD
EXPEDIA INC	E	US30212P3038	PARIS ALIGNED WORLD DEVELOPED

MOTOROLA	B	US6200763075	PARIS ALIGNED WORLD DEVELOPED
MOTOROLA	B	US6200763075	World Developed Equity Index Fund
MOTOROLA	B	US6200763075	Low Volatility Global Equity
MOTOROLA	B	US6200763075	Scientific Beta Multi-Factor Developed
MOTOROLA	B	US6200763075	FTSE CLIMATE TRANSITION WORLD
TRIPADVISOR	E	US8969452015	TM BRUNEL SMALLER COMPANIES EQ

- B The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with 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;

Section 8: The legality of divestment

1. Summary of the most pertinent points

LGPS regulation 7(2)(e)²¹ allows Administering Authorities (AA) to “take purely non-financial considerations into account” including when “some part of the financial return may be forgone”, for ethical reasons and “showing disapproval of certain industries”²² as long as two tests are met.

On the test of “good reason to support that scheme members would support the decision”:

- Law Commission Guidance²³, which is relevant to public as well as private sector pension administrators, allows AAs to make assumptions about the wishes of its scheme members. The example they used is almost perfectly analogous to the current situation regarding arms supply to Israel and support of their illegal occupation, accompanied by a growing number of judgements of International Courts and UN resolutions.
- It is implicitly revealed by the ethical posturing of Brunel and the LGPS funds, that they are already of the belief that scheme members desire ethical investments, that they abide to the highest degree to UN and international court judgements and that they would be averse to the for-profit weapons industry investment. (See s.8.3)
- Brunel have received, in their words “a lot of client and beneficiary interest in relation to exposure to Occupied Palestine Territories”.²⁴ On a 2022 beneficiary survey Devon PF received “a large number of comments opposing investment in arms manufacturing.”
- In January 2024 Wiltshire Pension Fund asked members “How would you feel about the Fund investing in weapons companies?” The response was “Overwhelmingly negative.” With 55% very negative Vs 3% very positive.²⁵ These figures are despite Wiltshire being known as “The Home of the British Army” for the last 120 years and having an enormous array of associated industry in the county. The results were almost identical to a less clearly worded survey Devon carried out in 2022.

On the test of there being “no risk of significant financial detriment to the fund”:

- It is strongly suggested by case law that a full divestment from the arms industry and some companies complicit in the illegal occupation would not be considered any risk of significant financial detriment to the scheme. (See s.8.5)

Both tests appear to be met regarding divestment from weapons companies and those which support Israel’s illegal occupation in Palestine.

²¹ <https://www.lgpslibrary.org/assets/statgui/ew/201707ISS.pdf>

²² <https://lawcom.gov.uk/project/pension-funds-and-social-investment/>

²³ <https://www.gov.uk/government/publications/fiduciary-duties-of-investment-intermediaries>

²⁴ <https://www.brunelpensionpartnership.org/wp-content/uploads/2024/06/2024-Responsible-Investment-and-Stewardship-Outcomes-Report-2.pdf>

²⁵ <https://wiltshirepensionfund.org.uk/Responsible-Investment-Survey-2024-Results>

2. Background

In October 2024 Nigel Giffin KC supplied the Local Government Pension Scheme Advisory Board (SAB) an opinion relating to the potential criminality of investing in companies that are currently assisting Israel.²⁶ The Opinion is quite different from his 2014 opinion related to the tobacco industry investments which focused on the legality of divesting.²⁷

Both the SAB and Mr Giffin admit the new Opinion is narrowly focused and thereby of limited value in the overall decision-making process. Advising members that it does not address whether it is appropriate or even legally correct for Administering Authorities (AA) to hold these investments. It only addresses the likelihood of AA board members being successfully prosecuted under terrorist legislation, for war crimes or assisting a genocide.

From Mr Giffin: “[the opinion] is **not** about what an administering authority might be **entitled** to do by way of refraining or divesting from such investments if it so decided.” (his emphasis)

Repeated by the SAB “**The advice is limited to the question of whether any specific criminal liability attaches to the holding of these investments, and not whether it is appropriate for funds to choose to divest.**”

Although the SAB then admit it does not sufficiently answer the question of criminal liability either, saying: “**The Secretariat hopes this advice assists funds in responding to this, or similar, letters but advises that funds should still seek their own legal advice in relation to their specific circumstances and investments.**”²⁸

The conclusion of his Opinion is that he believes it is unlikely an AA board member could be successfully prosecuted for assisting war crimes or genocide. There appear to be some questionable aspects to his Opinion which will be addressed in the next section but there are more pertinent questions that can be looked at first.

Mr Giffin’s 2014 tobacco divestment opinion was that divestment for solely non-financial reasons was legally possible and indeed the Greater Manchester Pension Fund divested from tobacco in 2014. Mr Giffin has been asked to revisit that opinion due to the increasing emphasis on ESG as a major factor in investing, though he has not yet provided it. Nevertheless, the law appears settled that it is permissible to divest for non-financial matters, even with some financial loss to the scheme, if certain preconditions are met.

This was outlined in guidance from the Local Government Pension Scheme Guidance on Preparing and Maintaining an Investment Strategy Statement July 2017.²¹

Regulation 7(2)(e) “Although schemes should make the pursuit of a financial return their predominant concern, they may also take purely non-financial considerations into account provided that doing so would not involve significant risk of financial detriment to the scheme and where they have good reason to think that scheme

²⁶

https://lgpsboard.org/images/LegalAdviceandSummaries/Oct2024_LGA_LGPSGazaeventsopinion_from_Nigel_Giffin_KC_.pdf

²⁷ <https://lgpsboard.org/images/PDF/Publications/QCOpinionApril2014.pdf>

²⁸ <https://lgpsboard.org/index.php/welcome>

members would support their decision. Investments that deliver social impact as well as a financial return are often described as “social investments”.

In some cases, the social impact is simply in addition to the financial return; for these investments the positive social impact will always be compatible with the prudent approach. In other cases, some part of the financial return may be forgone in order to generate the social impact. These investments will also be compatible with the prudent approach providing administering authorities have good reason to think scheme members share the concern for social impact, and there is no risk of significant financial detriment to the fund.”

In this context the word “social” is broad and can include ethical and human rights issues.

Law Com 374 (Ch 10, 1.13) included “**showing disapproval of certain industries**” within acceptable non-financial factors.²⁹ They also confirmed the 2 tests which are found unanimously (though of late with slight variation as mentioned in section 8.8) across all applicable guidance and pension fund legislation.

The right of the LGPS to divest over social, ethical and human rights issues, conditional of the 2 tests, became established in case law when confirmed by the Supreme Court in 2020, in a case brought by the Palestine Solidarity Campaign.³⁰

Following the case the SAB reiterated “**Should the authority wish to consider non-financial factors in its investment decisions it may do so taking into account the requirements of the guidance including the potential financial impact and the views of members. Such consideration may legally result in boycotts or disinvestment should the authority decide to take such action.**”³¹

In light of all the above it seems the pertinent question, and more justifiable in terms of expense to find out, is not “will we end up in The Hague if we don’t stop doing this?” but:

1. Is there good reason to think this is what our members want?
2. Would divestment risk significant financial detriment to the scheme?

3. Is there good reason to think scheme members might share the concern:

Anyone new to the LGPS could hardly fail to notice the impressive emphasis on what appears to be sound ethical investment. From Brunel’s strapline “Forging better futures by Investing for a world worth living in” to incessant mention of “Responsible Investing”.

The Wiltshire Pension fund is quite explicit with the use of the word ethical (related to “financially material factors” which will be gone into later).

“...expect its investment managers to take account of financially material social, environmental and ethical considerations in the selection, retention and realisation of investments as an integral part of the normal investment research and analysis process. The Fund believes that taking account of such considerations form part of the investment managers’ normal fiduciary duty. As such, the Fund has a

²⁹ <https://lawcom.gov.uk/project/pension-funds-and-social-investment/>

³⁰ <https://www.supremecourt.uk/cases/docs/uksc-2018-0133-judgment.pdf>

³¹ <https://lgpsboard.org/index.php/board-publications/legal-opinions> intro to 8th June 2020 document

commitment to ensuring that the bodies in which it invests adopt a responsible attitude toward the environment and adopt high ethical standards.”³²

Brunel claim in their Responsible Investment and Stewardship Outcomes Report 2024³³:

“We expect our asset managers to understand and respond to human rights issues”

“We consider, both as part of the selection process and in our ongoing engagements, whether companies they invest in comply with all legal requirements and the duty to respect all internationally recognised human rights ... including the United Nations Guiding Principles on Business Human Rights (UNGPs)”

“We monitor compliance with the Ten Principles of the United Nations Global Compact”

Even if a diligent new LGPS member researches enough to find in the small print that the phrase “responsible investment” isn’t used as might reasonably be assumed, but to encompass no more than “financially responsible”, the CEO of Brunel said nevertheless their investment ethos **“is not an amoral approach either...”**³⁴ To be not amoral means by definition being either moral or immoral. Saying, as he does next, **“...hence Brunel’s strapline: “investing for a world worth living in”** confirms Brunel’s claim to be a moral investor.

It is also the case that common among all the council funds and Brunel there are no mentions made of defence industry investments in the annual reports or on the websites.

The above statements made by Brunel will be looked into in Section 10.1, but on the point at hand, working backwards to find the reason for all the ethical posturing and carefully omitted mention of defence investments, should bring any reasonable person to the conclusion that the Pension Committees and Brunel already believe with certainty that scheme members desire their investments and the people managing them to abide by laws, abide by the UN and Human Rights organisations recommendations, to be morally sound and ethical and that members would have an aversion to investments in weapons manufacturers.

It was entirely reasonable for Brunel and the LGPS to make the assumptions they clearly have, no doubt based on frequent interactions with members on similar topics over the years. Demand for ethical pension investment is hardly new.

As it has been established that it is, with certain stipulations, legally allowable to maintain the portfolio in line what AAs *believe* are the wishes of members, even if the scheme would then not achieve the maximum financial return, two options were open to the AAs:

1. Abide by what they believe to be the members wishes and not invest in the type of companies in question.
2. Make a decision to disregard the members wishes and actively invest in those companies, all the while posturing to suggest to members that there is no need to worry that the ethics of their pension scheme might not match theirs.

³² <https://www.wiltshirepensionfund.org.uk/media/14030/WPF-2023-24-Full-Annual-Report/pdf/Wiltshire-Pension-Fund-2024-FullFinal.pdf>

³³ <https://www.brunelpensionpartnership.org/wp-content/uploads/2024/06/2024-Responsible-Investment-and-Stewardship-Outcomes-Report-2.pdf>

³⁴ <https://www.brunelpensionpartnership.org/2023/01/10/responsible-investment-is-a-fiduciary-duty/>

Unfortunately, they chose the second, less honourable path.

Now that the inconsistent investments have been made, it has put the automatically enrolled employees, who discover their contributions have been surreptitiously used to contribute to the arms trade, in the unfair position of having to ask for divestment of those companies.

In this position the AAs now have three options.

1. Make the assumption for members, as allowed. Roll back on the inconsistent investments by committing to divesting without undue delay.

This option is available as per the guidance. Doing so could save time and money, and not unimportantly in a financial sense as well, save the reputational harm of highlighting the current investments while asking for retrospective approval from the members the AA already believe to be disapproving of those investments.

2. Ask members to confirm their stance on these investments.
3. Resist any move toward divesting by continuing to incorrectly state that the AAs fiduciary duty is solely to maximise profit over every other consideration.

AA committee members inclined to the third option would be advised to listen less to their finance industry advisors and look again at the relevant legislation and guidance for themselves.

Although written for private sector pension trustees, Law Commission guidance from 2014 is considered the correct guidance to follow as confirmed by the Supreme Court in the *Palestine* case and because AA committee members must follow the same general legal principles as Trustees. **Error! Bookmark not defined.** It has a useful example of a comparable situation where it would be reasonable for trustees to make and act on assumptions, and to decide there is already “a good reason to think”:

“6.64 We think that in some cases trustees can make assumptions about beneficiaries’ views without carrying out surveys. In the Consultation Paper we remarked that trustees should not invest in activities which contravene international conventions, such as manufacturing cluster bombs which are banned by the Convention on Cluster Munitions. It was pointed out that investing in foreign firms which make cluster bombs is not illegal under UK law, and we were asked to clarify why we said this. At a practical level it might also be difficult for trustees to know whether a particular company manufactures cluster bombs.

“6.65 We accept that investment in cluster bombs is not necessarily illegal. But we think that the fact that there is an international agreement, ratified by the UK, which prohibits cluster bombs gives trustees reason to think that many people would consider them to be wrong. When coupled with letters from members agreeing, and no letters disagreeing, we think that trustees would have good reason to think that they were acting on members’ concerns rather than their own.”³⁵

- The request for divestment from weapons suppliers to Israel is consistent with the ICJ ruling of plausible genocide.

³⁵ <https://www.gov.uk/government/publications/fiduciary-duties-of-investment-intermediaries>

- It is consistent with the Arms Trade Treaty which was ratified by the UK.
- It is consistent with the July 2024 call for an arms embargo by the UN Human Rights Council.
- Divestment from companies that support West Bank settlement is consistent with the July 2024 ruling on the illegality of Israel’s occupation by the ICJ
- It is consistent with the September 2024 UN General Assembly resolution demanding that Israel "brings to an end without delay its unlawful presence" in the Occupied Palestinian Territory.

The above guidance and the current events which should already have been taken into account but haven’t, makes it clear that the question asked of Nigel Giffin KC was overly concerned with criminal liability, as that high threshold is not required before a decision to divest should appropriately be made without having to ask members. It reflects poorly on the intention of the SAB and pension committees, appearing that they are content to maintain a portfolio with no regard for ethics until the point of criminal liability.

The above factors alone should be enough for AAs to take the view that members would naturally want their portfolio to be free of related investments. AAs can add that members have already expressed considerable concern on investments relating to Palestine.

- As mentioned in the 2024 Brunel RI and stewardship report: **“We have received a lot of client and beneficiary interest in relation to exposure to Occupied Palestine Territories (OPT)”**

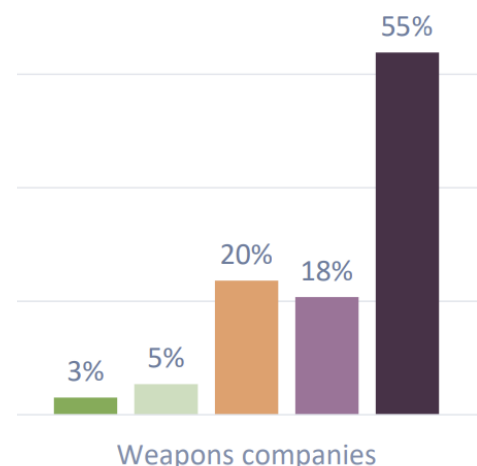
a. The Wiltshire Survey

More proof of “good reason” has been provided by Wiltshire Pension Fund who are setting the standard with award winning member engagement. From their 2024 report:

“LISTENING TO MEMBERS: We have continued to advance the Fund’s approach to responsible investment, in line with the Fund’s best long-term financial interests, and this year we were extremely proud to win (for the second time!) the LAMP Investment Awards trophy for “Best Approach to Responsible Investment”. During the year, we reached out to our members to understand their views on responsible investment matters. We were amazed at the level of engagement we received from the members, with just under 3,000 responses, 30% more than in 2021. The message we received from our members was clear – it is important to them for WPF to invest in a sustainable way, and to use our influence to drive better outcomes through stewardship activities.”

The engagement by Wiltshire asked if members wanted to invest in weapons companies:

“How would you feel about the Fund investing in weapons companies?”

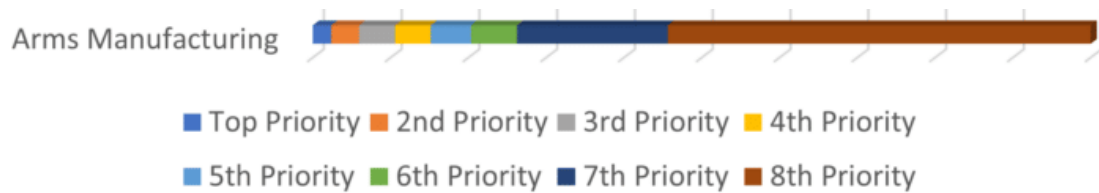


Only 3% felt it would be a positive move, 5% somewhat positive. Compared to 55% very against it and a further 18% somewhat against it.³⁶

It is worth noting that these results are despite Wiltshire being known as “The Home of the British Army”. It is a major military hub with Salisbury Plain, Porton Down, RAF Lyneham, many barracks, garrisons and associated supporting industries.

b. The Devon Survey

In contrast to Wiltshire’s clear question, Devon’s very poor survey design left the results open to misinterpretation.³⁷



Taken to mean, as the words of the question state: “**the importance to you in how the fund selects companies in which it invests**” the results appear to show almost perfect consistency with Wiltshire’s survey findings.

- While it was a top priority to invest in/for climate change, it was the lowest priority by far to invest in arms manufacturing.
- In addition to the question, in its report to the committee, officers stated “**There were a large number of comments opposing investment in tobacco and arms manufacturing.**” With only “some” reported as stating the opposite.³⁸ This point was missing from the report on the survey given to members.
- The proportion who marked it the “8th priority” was exactly the same number as the 55% who were “very opposed” to Arms investments in Wiltshire’s results.
- The cumulative 73% negative about arms manufacturing in Wiltshire matches the 74% of Devon’s 7th & 8th priority responses.
- The 3% in Wiltshire who felt very positive about arms investing matches the small percent in Devon who felt investing in Arms Manufacturing is a “top priority”.

c. The Surrey Survey

Surrey did not address arms investments directly but did enquire on the importance of prioritising ESG, in each question only between 4- 6% disagreed.³⁹ They then asked if the fund should exclude companies who did not improve after engagement. 67.4% agreed against only 6.6% disagreeing. In case it is not obvious enough, the inability of weapons manufacturers to “improve” in terms of not doing the practice of concern - making weapons for profit - is looked at in section 10.

³⁶ <https://wiltshirepensionfund.org.uk/Responsible-Investment-Survey-2024-Results>

³⁷ <https://www.devonpensionfund.org.uk/investments/stewardship-survey-results/>

³⁸ <https://democracy.devon.gov.uk/documents/s41758/Stewardship%20Survey.pdf>

³⁹ https://www.surreypensionfund.org/_data/assets/pdf_file/0003/363144/Responsible-Investment-Consultation-Analysis-v1.pdf

The survey shows consistency with Wiltshire and Devon, what ethical considerations are material to the vast majority of beneficiaries with only a small minority seeming to be solely interested in maximising financial returns.

c. Interpreting the silent majority

Devon's survey received a response from 3.2% of members. The 3000 responses Wiltshire were "amazed to receive" was less than 4% of their membership, the knotty question of what to do with the 96% who for various reasons didn't complete the survey is addressed by the Law Coms guidance:

"6.66 We do not think that there needs to be 100% agreement. If a majority are opposed to an investment while the rest remain neutral, we think that would be enough. It is the nature of pensions that many members will not engage with investment decisions"

It would seem unlikely that a court would decide that AAs must require a literal majority of over 50% of members rather than respondents, as it will in all likelihood be impossible to achieve that amount of engagement. If that was the case the non-financial investment decisions allowed by the regulations could never be implemented. The earlier point about not actually needing a survey at all anyway and in 6.65 **"When coupled with letters from members agreeing, and no letters disagreeing"**. Indicates that there is no need for a literal majority of all members indicating agreement.

But nothing could be as easy as having no letters disagreeing on an issue. The Law Commission also said on this issue of percentages where some members do disagree:

"6.62 Consultees asked for more detail about this test. In particular, what proportion of beneficiaries need to agree, and how can this be proved?"

"6.63 We cannot give a prescriptive answer to these questions, but we think that the courts would judge the issue in the round, focusing on whether trustees applied their minds to the right question and sought an answer in a reasonable way."

The Law Commission guidance goes on to address a situation where the majority of members are in favour of divestment but a minority are strongly opposed.

6.67 "We think that in cases where the issue is clearly controversial, the courts may well expect trustees to focus on financial factors rather than becoming embroiled in disagreements between the members."

However, the example of *Cowan v Scargill* given might not be relevant for a number of reasons:

- In that case the court felt the proposed broad divestment; of all non-UK based investments and from the oil, gas and nuclear industries, risked significant financial detriment for the fund.
 - If the divestment proposed did not risk significant financial detriment, then would the example be relevant?
- No survey of members views was taken for that case. It was based on union trustee's views and a claim of numbers of members they represented.
 - Scargill and the NUM trustees represented only half the members so there was good reason to believe their view would not have been a majority.

Harries Vs Church Coms (a charitable trust case though frequently used as a benchmark for fiduciary duty) usefully clarified that controversy was not a bar if the financial element was not of a level to risk significant financial detriment:

“The judge held that, given the “endless argument and debate” over what Christian ethics require, the commissioners were “right not to prefer one view over the other beyond the point at which they would incur a risk of significant financial detriment””⁴⁰

The lack of agreement among the group was not considered to be an issue that precluded divestment from more than just the weapons manufacturers as shown in s.8.5.

4. “Significant financial detriment” in relation to fiduciary duty:

In regard to non-financial factors the LGPS ISS guidance states **“some part of the financial return may be forgone in order to generate the social impact”**Error! Bookmark not defined.

The 2013 Law Commission guidance states: **“If trustees wish to take a decision motivated by non-financial factors, they should seek advice from their financial advisers on the effect of the decision on returns to the fund.”** They continue by saying **“Often excluding a sector of the market will not risk significant detriment”** Entirely logical as other sectors can have similar returns, and in a properly diversified portfolio any difference will be a fraction of a fraction. It is though, worth some provisional enquiry as to the effect divesting entirely from the arms industry might have on the fund.

The calculations could be done in a number of ways but a reasonable approach might be to consider Devon’s current £50 million weapons sector investment as an example and use known market values from the last 10 years to calculate the effect divestment would have had.

Comparing the performance of the weapons sector to the broader market, according to MSCI, the annualized returns over the past 10 years are as follows:

- **MSCI World Aerospace & Defence Index: 11.33%**
- **Broad Market Performance - MSCI World Index: 9.78%**

Difference in Investment Value:

A weapons sector investment of £50 million made ten years ago would have grown to approximately £146.5 million, while the broad market investment would have grown to about £127 million.

Impact on the Devon Pension Fund:

As of March 31, 2024, the Devon Pension Fund's total value was approximately £5.9 billion.

- **Additional Value from Defence Investment:**
£146.5 million (weapons) - £127 million (broad market) = £19.5 million
- **Percentage Increase in Fund Value after 10 years:**
£19.5 million / £5.9 billion × 100 ≈ 0.33%

⁴⁰ *Harries v Church Commissioners* [1992] 1 WLR 1241 at 1250-1251.

Just as an exercise because of course pensions aren't affected exactly in this way. To calculate how much the £19.5 million additional gain from the 10-year defence investment could increase each pensioner's monthly payout when spread over a 10-year period:

- **Total Members in the Scheme:** 130,000 (as of March 2024, Devon Pension Fund).
- **Proportion of Members Receiving Pension Payments:** Let's assume 52,000 or 40% of members are active pensioners (standard for public pension funds).
- **Average Pension Payout:** Based on UK averages for local government pension schemes, the **annual pension payout** is approximately **£7,000 per pensioner**, or **£583 per month**.
- **Duration of the Increased Benefit:** We'll assume the additional funds are spread over 10 years for simplicity.
 - **Additional Funds Per Year:** £1.95 million.
 - **Monthly Distribution for All Pensioners:** £162,500
 - **Additional Monthly Benefit Per Pensioner:**
 - £162,500 / 52,000 pensioners ≈ £3.13 per month

5. Would the suggested divestment cause “Significant financial detriment”?

Case law suggests that it would not.

The Judge in *Harries v Church Commissioners* addressed this issue:

“It is not easy to think of an instance where in practice the exclusion for this reason [ethics] of one or more companies or sectors from the whole range of investments open to trustees would be likely to leave them without an adequately wide range of investments from which to choose a properly diversified portfolio.”

The case specifically sought to establish some legal limit on divestment for non-financial factors, so its conclusion is very relevant.

The Church fund was already divested from 13% of UK companies, which was considered acceptable by the court and not **“beyond the point at which they would incur a risk of significant financial detriment”**, while 37% of UK companies would not be acceptable.

The church's 13% of exclusions at that time included full divestment from the armament industry, plus other typically high profit industries of alcohol, gambling, newspapers and tobacco, plus companies in, or more than minimally involved with apartheid era South Africa.⁴⁰

Brunel's funds boast a globally diversified portfolio from the approximately 48,000 companies listed worldwide⁴¹ only 73 are listed in the defence & aerospace sector.⁴² A full divestment from the defence industry would be only 0.15% of companies.

⁴¹ <https://www.statista.com/statistics/1259025/global-listed-companies/>

⁴² <https://stockanalysis.com/stocks/industry/aerospace-and-defense/>

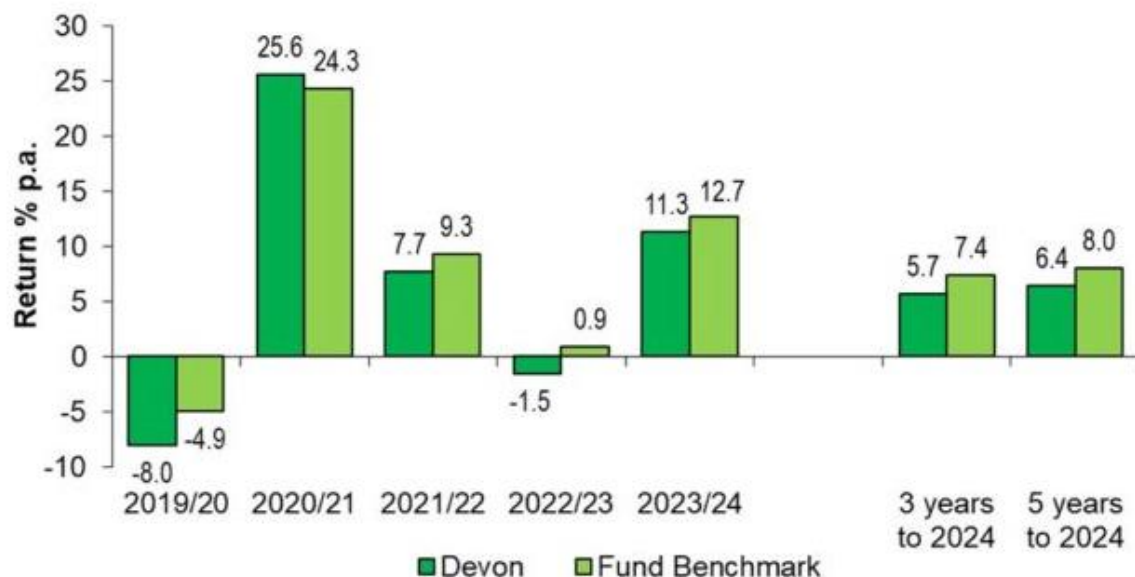
In terms of value, the total global market capitalization of all listed companies is around \$100 trillion. The global defence sectors market cap is approximately \$1.167 trillion⁴³ or 1.17%.

It could be extrapolated from these facts that the financial detriment of divesting just from arms manufacturers and a few select other companies, would be of lesser detriment than the divestments which were confirmed as acceptably insignificant in that case.

To this day their divestment remains unchallenged and the Church of England Ethical Advisory Group stands by their full divestment from any company that derives any turnover from production, processing, supply or storage of indiscriminate weapons or more than *de minimis* turnover from conventional weapons related products or services.⁴⁴

6. Can Devon's pension fund afford it

From past and current annual reports, it seems the Devon Pension Fund is in a fair state of health⁴⁵. Average (CPI) inflation in the UK over the last 5 years was 3.99% even with a couple of unusually high years. The Devon fund is well above that and a 0.33% reduction appears unlikely to cause a material detriment to the health of the fund.



Of course, the idea of giving up any hard-won profit is nerve-wracking for any investment manager “what if we give an inch and next they take a mile!” This has already been settled in court as mentioned, it is not possible to take a mile. Having some reduction for sound ethical reasons is though, the way the industry is swinging. ESG factoring will level out and the industry will be left with a new normal, very slightly less profit, quite a bit less cold and mercenary.

⁴³ <https://companiesmarketcap.com/defense-contractors/largest-companies-by-market-cap/>

⁴⁴ <https://www.churchofengland.org/sites/default/files/2024-09/defence-advice.pdf>

⁴⁵ <https://www.devonpensionfund.org.uk/document/devon-pension-fund-annual-report-and-accounts-summary-2-2/>

7. Would members be willing to put aside moral concerns for 0.33% financial gain?

While the pension fund would not likely be materially financially affected by such a modest divestment as to cause any impact on pensioners, it is worth the hypothetical enquiry as to whether scheme members would prioritise financial returns over ethical considerations.

When Wiltshire Pension Fund sought member views they found that even though most voted they were unsure if ESG issues would be a financial risk to the fund, only 27% voted that financial returns should be prioritised over ESG issues.⁴⁶

73% (negative about weapons) was the same as the proportion of neutral or against putting profit before ESG issues, it seems reasonable to assume they would largely be the same members.

Every LGPS member is or was a public sector worker. The nature of their chosen careers is putting people first and, in most cases, accepting a more modest salary than in the private sector to do so. To give them due credit it should be assumed that they would most likely continue with those admirable personal principles into retirement.

In terms of putting people before profit it could likely be argued, if there was a need to, that they are an “affinity group” with even more reason for the funds that manage their interests to consider their shared principles and more justification to invest ethically.

When Wiltshire asked their members, the question was asked in a way which did not expose that they are already heavily invested in weapons companies. The more honest question is hard to even read: “To increase your pension scheme profits by 0.33% we invested in the makers of the tanks, bombs and AI killer technology currently seen in action on children in Gaza, is that ok?”

Do the AA committees even need to wonder what would be a significant enough increase in pension payout to tempt public sector workers to go along with these investments? It is probable the response they will find, in the main, will be shock and revulsion at the suggestion and that no amount of money would tempt them. (The concept of needing these companies for our defence is discussed in Section 10.9)

⁴⁶ https://wiltshirepensionfund.org.uk/media/13011/Responsible-Investment-Survey-2024-The-Results/pdf/Responsible_Investment_Survey_Report_2024.pdf

8. Did test of ‘no risk of significant financial detriment’ change with *Palestine* case?

The short answer is almost certainly no and unless someone tries to tell you it did, or that this test is impossibly hard now, you can safely skip this detailed section.

The long answer is interesting though. There appears to be an error that is being repeated and is potentially discouraging the justifiable use of non-financial factors, making the issue worth explaining.

There are at least 3 variations of the financial detriment test in use

1. From 1993: ...would not involve a risk of significant financial detriment to the fund
2. From 2014: ...does not risk material financial detriment to the fund
3. From 2017: ...would not involve significant risk of financial detriment to the scheme

The first variant has its roots firmly embedded in case law. In *Harries v Church Commissioners* (1993) The Church suggested that legally, the commissioners should put ethics first even when there was a risk of incurring significant financial detriment. The court decided the limit was:

“Trustees may, if they wish, accommodate the views of those who consider that on moral grounds a particular investment would be in conflict with the objects of the charity, so long as the trustees are satisfied that course would not involve a risk of significant financial detriment”

This test has been used to inform the legal guidance on trustees fiduciary duty in all areas not just charities, including by the Law Commission and in the LGPS regulations.

The first UK mention of “Material Financial Detriment” is seen being used interchangeably with the *Harries* variant by Nigel Giffin KC in his advice to the SAB in 2014. **“...the administering authority can in principle have regard to wider considerations where that does not run the risk of material financial detriment to the fund.”**⁴⁷ Material is in essence the same as significant – a difference that matters. While an insignificant difference that doesn’t matter would be immaterial.

The earliest google search result for the exact phrase "significant risk of financial detriment" is 1st July 2017 in the Governments revised LGPS regulations that were challenged in the *Palestine* case. The test was mentioned twice and the author had switched the order of the words on just the first mention and the second mention was the same as in *Harries*. It could have been a mistake, though as the controversy around the other parts of the regulations was precisely about government attempts to prevent certain non-financial factors leading to divestment, it could have been a deliberate switch to slip the new version into the lexicon.

The second Google result is a local government spokesperson using the switched test to resist a call to divest from tobacco companies.

⁴⁷ <https://lgpsboard.org/images/PDF/Publications/QCOpinionApril2014.pdf>

Google "significant risk of financial detriment" X | Voice Search | Images | Tools

All Images Videos Forums News Web Books More

30 Oct 2000 – 2 Oct 2018 All results Advanced Search Clear About 2 results (0.16 seconds)

GOV.UK
<https://assets.publishing.service.gov.uk/file/G...> PDF

Local Government Pension Scheme
 1 Jul 2017 — would not involve **significant risk of financial detriment** to the scheme and where they have good reason to think that scheme members would support their ...

BBC
<https://www.bbc.co.uk/news/uk-england-hampshire-...>

Hampshire County Council tobacco pension investment ...
 7 Sept 2018 — ... **significant risk of financial detriment** to the scheme". Dr Rachel Melsom who advocates tobacco-free investments within the finance industry, said: "For ...

a. The mistake in *Palestine*

The *Palestine* case⁴⁸ is frequently cited because *Palestine* established the two-part test in case law. The tests are quoted a number of times, though the other test was more the focus of the case and the financial detriment test was not discussed. It was just close enough in the guidance text to be quoted repeatedly, with no attention paid to the order of the words, despite all three variants being mentioned within the judgement.

The correct *Harries* test was initially mentioned by Lord Wilson when directly quoting Law Com 350 (6.34), without comment other than to say the two tests were generally accepted by the government:

12(c) "...and the decision should not involve a risk of significant financial detriment to the fund".

The next quotation was from the government regulation that the case judgement eventually found against. Of the two variants in the regulation Lord Wilson quoted the switched test, perhaps because it was the first of the two mentions:

17 "provided that doing so would not involve significant risk of financial detriment to the scheme"

The variation in wording of this less relevant test was not raised and points more pertinent to the case were discussed in the following sections. Probably due to the subject of the case being the government document, most of the other mentions of the test were the switched version from that document.

A further mention (in 25) confusingly said the government document adopts the Law Com test (which it did in the second mention on that document) but then repeats the switched version from the document which isn't the Law Com test. Again, as the other test was more the focus, this switched wording wasn't discussed.

The most impactful mention shows beyond doubt that the phrase was being used without consideration as to the variations. In s.43, Lord Carnwath confirms that he agrees with the

⁴⁸ <https://www.supremecourt.uk/cases/docs/uksc-2018-0133-judgment.pdf>

criteria and tests proposed by the Law Commission but instead of quoting the *Harries* test as per the Law Com guidance he was agreeing with, he quotes the wrong version of the test:

43. The same must be true of policy choices made under regulation 7(e). As Lord Wilson says (para 17) the guidance in that respect follows the approach of the Law Commission's report (Law Com No 350). That report in turn may be seen as having settled a long-running debate as to the extent to which pension trustees could take account of non-financial factors, dating back to cases such as *Cowan v Scargill* [1985] Ch 270 (see for example Lord Nicholls *Trustees and their Broader Community: where Duty, Morality and Ethics Converge* (1996) Australian Law Journal Vol 70, p 206). There appears now to be general acceptance that the criteria proposed by the Law Commission are lawful and appropriate. I agree. Thus administering authorities may take non-financial considerations into account -

“... provided that doing so would not involve significant risk of financial detriment to the scheme and where they have good reason to think that scheme members would support their decision.”

These are judgements to be made by the administering authority, not the Secretary of State. The attempt of the Secretary of State to impose policy choices was objectionable, not so much because they were not “pensions purposes” (in the judge's words - see above), but because they were choices to be made by the authorities, not by central government.

It is crucial to see it in the original form as then it is clear that it was a quotation from another document, rather than being the judge's wording. It is clear that the intention was to quote the Law Commission, so it is clear it was simply a mistake.

When this part of the *Palestine* judgement is repeated in other documents, it can be written with the quotation marks around the whole section, as though the quoted part is the judge's wording, with the weight that would carry. The mistake is then not as apparent, though the judge's wording alone does confirm the intention to agree with the Law Coms wording.

Later (in 80) the judgement does clarify the point, and perhaps clarifies why the variance in the test isn't discussed IE no one involved doubts that materiality is an essential component of the test regardless of the word order: **“They may only take non-financial factors into account if that can be done without any material financial detriment for scheme members.”** But this part of the judgement is rarely quoted.

b. In the Pensions Law Handbook ed. 15

A misunderstanding of the mistake in *Palestine* appears in the 15th Edition of the Handbook (10.24 p458).

The author does not appear to realise it was simply a mistake nor treat it as such, perhaps having read it from other than the original judgement, but goes into what is now problematic about the wording.

Initially focusing more on the change from “there should be no risk of significant financial detriment” to “would not involve significant risk of...”

“Essentially, the Law Commission test is concerned about the potential level of financial detriment, whilst the Supreme Court equivalent test seems to be concerned with the level of risk (of any financial detriment).”

Since the level of financial detriment is undefined in the erroneous version, in addition to “any financial detriment” it could now allow an insignificant risk of significant financial detriment, which virtually reverses the original meaning where above all else, avoiding significant detriment was the core of the test:

“Although the two tests appear similar, the test in the [Law Com] Report suggested that it was acceptable for trustees to make investment decisions based on non-financial factors, even where there is a risk of financial detriment, provided that there was no prospect of the financial detriment being significant.

“The Supreme Court test suggests that trustees can make decisions based on non-financial factors even where there is potential for significant financial detriment, provided the risk of any financial detriment is not significant.

Using the Law Coms test and judging whether a potential financial detriment might be significant for a fund is fairly straightforward – Calculate the worst that could happen, up to the total loss of an investment, and relate that to the size of the fund.

Applying the erroneous wording and trying to quantify “significant risk of any detriment” though, in the context of investments, is bordering on the absurd. Every investment carries a risk of some detriment so no divestment would be possible using this test. Usefully highlighting the inferiority of the government’s switched version.

They conclude

“As a result, although case law now appears to confirm that trustees can take into account non-financial (including moral and ethical) considerations when making investment decisions, there remains a significant element of doubt as to the correct test to apply to determine whether a particular non-financial factor should be taken into account”

It is hard to understand why, when it is apparent that the test is somewhat nonsensical in the form they present, they didn’t go back and look again at the judgement before publishing a book people rely heavily on.

I haven’t access to later additions to check if there has been any change but either way, I felt this was worth going over to illustrate the confusion the mistake is causing.

c. The impact of the mistake being repeated

The wrong version has become, in the last few years since this judgement, an often-quoted variation of the test and, maybe preferentially, by some using *Palestine* to back up the portrayal of divestment as more legally risky to an AA than it is.

The variations are close enough in meaning that the switch remains unexplored. In some places the variations are used interchangeably, in a Commons briefing from February 2022

two variants are used in the same introduction.⁴⁹ On the briefing document itself all 3 variations are used interchangeably without comment.

In all variations the intent should clearly be some meaningful detriment; something which risks compromising the financial health of the pension fund, or where would be the reason for concern.

However, some advisors are focusing on the switched version claiming that the law is very much tighter than it would be if using the correct *Harries* version. This has implications not just for the ethical divestment campaigns but for all ESG considerations. For example:

However, for trustees to consider non-financial factors in investments, they must comply with the following two stage test:

- 1) Trustees must have a good reason to think that all scheme members share the concern; and**
- 2) The decision must not involve a significant risk of financial detriment to the fund.**

This is a very high bar which in practice means many trustees are deterred from considering non-financial factors.⁵⁰

It is impossibly high if put like that but this advice includes two questionable wordings. If the “trustees must have good reason to think all scheme members share the concern”, knowledge of just one dissenting member would prevent the concern of every other member being acted on. And then of the three possible wordings the erroneous variant of the second test is used.

It follows a pattern where advisors who appear broadly against non-financial factoring tend to pick that variation.

The Association of Pension Lawyers Investment & DC Sub-Committee are also using the erroneous wording and it bolsters their continuing position that non-financial factors should not be used if they impact financially at all.

In their presentation “**Trustees' ability to take into account non-financial factors when investing: has the Supreme Court decision in Palestine changed anything?**”⁵¹ Despite all three variants appearing in the judgement, they focus only on the wording used erroneously by Lord Carnwath, to suggest it may have displaced the Law Coms / *Harries* test when in fact he clearly agreed with it.

They say “**Judgment says wording is adoption, almost word for word, of the Law Commission two-stage test**” which shows they are aware that the wording wasn’t as per the Law Coms which was being agreed so they should also be aware it was a mistake, as there was nothing to indicate the court intended anything other than a purely word for word adoption. Indeed, the final mention of the test in the judgement was to confirm that it must be a significant detriment: “**80. They may only take non-financial factors into account if that can be done without any material financial detriment for scheme members.**”

⁴⁹ <https://commonslibrary.parliament.uk/research-briefings/cbp-7309/>

⁵⁰ <https://dwfgroup.com/en/news-and-insights/insights/2024/10/the-role-of-esg-in-pension-investment>

⁵¹ <https://www.traverssmith.com/media/6515/jonathan-gilmour-apl-talk-on-non-financial-factors-in-pensions-investment-decision-making.pdf>

The APL repeatedly add the word “any” to say in their opinion the law now means **“that there is no significant risk of any financial detriment”**, and say, at least partly due to that addition: **“This is a significant, and most probably insurmountable, hurdle to jump for most pension schemes.”**

The APL posit **“Has *Palestine* approved or given credence to the Law Commission test?”** answering

“Our view is that, on balance, it has not”, Because **“No analysis around Law Commission test”**, and **“Different wording compared to Law Commission guidance means it is a different test.”**

Analysis would only be needed if the court intended to change the wording of the Law Com test. Rather the court said that the government is generally content with the Law Com test, and that the court fully agreed with the Law Com. It was a clear approval of the Law Com test and, just as clear, it was a mistake in quoting the test wording from the government regulations instead.

d. In the Charity sector

The charity sector is having the same discussion. The Charity Commission guidance matches the Law Commission in using the *Harries* definition of fiduciary duty “if there is no significant financial detriment”. However, the switched wording is making it into the lexicon, with the same interchangeable use of the two wordings seen, including in the 2021 case *Butler-Sloss & Ors v The Charity Commission* ⁵²

Palestine is cited (s.66) quoting Lord Carnwath, which included the error. Mr Cumming QC is recorded as querying it, he “submitted that there may be a difference between “*significant risk of financial detriment*” and “*a risk of significant financial detriment*” but the variations continued to be used interchangeably with no discussion on that.

e. Potential consequences if left uncorrected.

Usefully in the LGPS guidance on ISS regulations both the *Harries* test and the switched variation are still within regulation 7(2)(e) but it clarifies that the test is met regardless of wording, even when there will be a definite financial loss, not just a risk of it.

“...some part of the financial return may be forgone in order to generate the social impact”

The reasonable read is that detriment in itself means financial harm to the scheme, not just a financial loss.

The question is though, are AAs making decisions from their own reading, or a traditional reading of the guidance, or relying on the advice of investment professionals, who are purely interested in profit, and who relay the advice of the people such as quoted above who portray the test as an impossibly high bar.

⁵² <https://www.bailii.org/ew/cases/EWHC/Ch/2022/974.html>

It would be useful to ask the court to correct the error in *Palestine* before it becomes more engrained.

9. Who is calling your Fund's shots?

The amplification of the above-mentioned error could, among other factors, be contributing to a paralysing effect on the fund administrators.

When a new LGPS committee member is faced with the 1100 page "Pension Law Handbook", the 272-page Law Com 350 "Fiduciary Duties of Investment Intermediaries", the 155-page Law Com 374 and the verdicts of trials that needed the Supreme Court for a decision on fiduciary duty, it is little wonder that doing nothing different might be seen as the safest response to requests for change.

This inaction could be encouraged by their professional advisors, who are by nature overwhelmingly interested in financial results, and the new committee member may lean more heavily on them than they should. As shown in section 8.8 it might even be the case that alternative wordings of the guidance could be used to create undue fear of legal challenge.

The fiduciary duty of the committee member though, by reason of the guidance, encompasses a broader approach than merely financial concerns, informed also by the non-financial interests of the members, and the committee member is there to ensure the investment manager is acting on the rounded interests of the members.

The paralysis is common enough that it has been addressed by The Financial Markets Law Committee's Feb 2024 Guidance "Pension Fund Trustees and Fiduciary Duties: Decision-making in the context of Sustainability and the subject of Climate Change"⁵³ Clarify that being overly cautious is counter to fiduciary duty

2.8 Pension fund trustees are, broadly speaking, not judged in hindsight nor are they expected to have perfect foresight when making complex decisions about investment. The presence of fiduciary duties does not require undue caution. In fact, too little or too much caution is not in line with responsibility "for the conduct of the affairs of another" where those affairs are financial.

3.1 Pension fund trustees will have expert advisers and expert fund or investment managers will be involved. Pension fund trustees should challenge these professionals to help the trustees to meet their obligations.

3.2 Advisers will advise. They will be the first to point out that it is not their role to make the decisions that need to be made. Their advice will often be followed, but if their advice is simply "rubber-stamped" by the pension fund trustees then the trustees are abrogating decision-making responsibility that is theirs and not that of the advisers. That is not what the law requires.

3.3 It is important that the advisers make clear, and pension fund trustees understand, (a) what the advice is based on and (b) what the advice covers and what it does not. Even if advisers have properly taken a relevant matter into account for

⁵³ <https://fmlc.org/wp-content/uploads/2024/02/Paper-Pension-Fund-Trustees-and-Fiduciary-Duties-Decision-making-in-the-context-of-Sustainability-and-the-subject-of-Climate-Change-6-February-2024.pdf>

their advice, it is still for the pension fund trustees themselves to take that relevant matter (and the advice) into account for their decision. There may be other relevant matters which the advisers have not taken into account; it is for the pension fund trustees to make sure those relevant matters are taken into account.

Working backwards to understand the motivation of writing this guidance, it fits the situation where finance professionals, as shown in the previous section, might portray the leeway as being impossibly narrow and it paralyses committee members into never allowing non-financial factors to be used, other than the few pre-determined ones all funds now have, e.g. cluster munitions. The AA committee members should ask themselves; who decided those factors, and if *they* the committee members have ever made a decision on behalf of the members which does not just rubber stamp the advisor's advice. In reality are the advisors de facto Trustees?

It is entirely natural that some tension would exist. Committee members are not legally trained finance professionals but they are making legally bound decisions. Along comes a finance professional and they will be frustrated at any attempt to reduce their ability to maximise profit and the committee member may well feel the safest thing is to always listen to the professional. Rather, they should understand it is not safe to have purely finance driven employees working with insufficient restraints those employees have effectively written for themselves.

The answer is for the committee member to acquire sufficient technical knowledge of fiduciary duty in the round, and to back themselves up with genuine attempts to engage with the scheme members they represent.

10. Is the suggested divestment even a non-financial factor?

After all the talk of non-financial factors the Law Commission 350 actually suggests the proposed divestment might not be a non-financial factor and used a very close example (underlining added):

6.27 Trustees *may* take account of any factor which is financially material to the performance of an investment, including environmental, social and governance factors. Professor Kay noted that most lawyers he talked to agreed with this view, but uncertainties remained. As ShareAction commented, this is “partly down to the persistence of myths and misconceptions about fiduciary duty”.

6.28 Our own consultation has reached the same conclusion. There is general agreement that wider investment factors may be considered, but concern that pension trustees may continue to receive risk averse legal advice on the issue.

6.29 We hope that we can finally remove any misconceptions on this issue: there is no impediment to trustees taking account of environmental, social or governance factors where they are, or may be, financially material

6.30 Whilst it is clear that trustees may take into account environmental, social and governance factors in making investment decisions where they are financially material, we think the law goes further: trustees *should* take into account financially material factors. As a leading text notes:

Trustees should have regard to whatever risks may affect an investment, and balance them against its yield. A good example of that is where before

1994 trustees took the view that apartheid posed undue political risks to an investment in South Africa, and it would have been difficult to make trustees liable for refusing to expose their fund to such risks if they genuinely considered the question and decided in good faith to avoid them in the interests of their beneficiaries.

Considering the rulings of the ICC and ICJ regarding the finding of apartheid and plausible genocide and the reputational harm complicit company's risk, the risk of others divesting affecting the share prices, and risk of sanctions, has advice been sought on the potential financially material risk to the fund?

LGIM list most of the above points, and some very close equivalents, when explaining the financially material reasons they divested from controversial weapons.⁵⁴ It appears the recent legal judgements of the ongoing attack on Gaza have not been factored in yet but if they were, then the current circumstances would easily be equivalent and enough to divest.

Just in general terms, the way funds make no mention of their arms investments shows fear of the reputational harm they know will result. If considered properly, in conjunction with the transparency expected of funds, arms investment should be recognised as being a financial factor.

11. The UK Stewardship Code 2020

Currently not all LGPS funds are signatories, though Devon Council and Brunel are.⁵⁵ Some, such as Nottingham council, propret to be following the code while not being signatories.

Principle 1 states: **"Signatories' purpose, investment beliefs, strategy, and culture enable stewardship that creates long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society."**⁵⁶

Judging by the common responses to scheme member engagement, the ethical underpinning of society is one such benefit the beneficiaries consider to be of long-term value. The code does not try to enforce particular ethical positions on the fund's investments, it is not their job to do so, but it does make clear an expectation to consider social impact: **"social factors, in addition to governance, have become material issues for investors to consider when making investment decisions and undertaking stewardship"** and where found, to then integrate those factors into the fund's investment strategy.

Beneficiaries are expected to be engaged and beyond that, signatories are expected to show **"how outcomes of engagement have informed investment decisions (buy, sell, hold)"**

Having engaged to discover beneficiaries needs, the Principles of the Code state the fund has a responsibility to integrate those and/or report back to the beneficiaries.

Principle 7: Signatories systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfil their responsibilities.

⁵⁴ <https://www.lgim.com/landg-assets/lgim/document-library/capabilities/lgimh-controversial-weapons-policy.pdf>

⁵⁵ <https://www.frc.org.uk/library/standards-codes-policy/stewardship/uk-stewardship-code-signatories/>

⁵⁶ https://media.frc.org.uk/documents/The_UK_Stewardship_Code_2020.pdf

Signatories should explain how information gathered through stewardship has informed acquisition, monitoring and exit decisions, either directly or on their behalf, and with reference to how they have best served clients and/or beneficiaries.

a. Devon’s creative interpretation of the code

In their October 2022 stewardship engagement with scheme members, Devon Fund asked:⁵⁷

13. In relation to question 9, please rank the following issues in order of importance to you in how the Fund engages with and/or selects the companies in which it invests

1	Climate Change
2	Tobacco
3	Diversity of Board
4	Human Rights
5	Employment Standards
6	Bio-Diversity
7	Effective Audit
8	Arms Manufacturing

It’s a curiously poor survey design by professional officers of the council finance department.

- The inclusion of “and/or” in the question means respondents are answering one of three options. It is therefore impossible to determine what the respondents intended with their answer, while making it possible to be selective with the interpretation.
- Referring back to question 9 was unnecessary and added to the potential for confusion. Question 9 was essentially the same as the first half of the question but not relevant to the second half.
- The options were not equivalent. 6 of the 8 are, like Climate change and Human Rights, broad issues. While Tobacco and Arms are products/sectors.
- If genuinely seeking members views there is no need to force respondents into a position of prioritising. Perhaps none were a high priority but the respondents were forced to declare something as their top priority which could be over-used to direct investment.
- Priority ranking gives no negative option, only degrees of positive.

If for respondents, meaning was informed mostly by the latter part of the question - to rank in order of what it was important to invest in or for - the results appear to show almost

⁵⁷ <https://democracy.devon.gov.uk/documents/s40657/Stewardship.pdf>

perfect consistency with Wiltshire’s survey findings as mentioned in section 8.3.b. While it is a top priority for many to invest in or for climate change, it is the lowest priority by far to invest in arms manufacturing. The precise consistency with Wiltshire’s results goes some way to confirming that this was likely to be the way the question was interpreted.

In their report to the pension committee, the council⁵⁸ officers stated **“There were a large number of comments opposing investment in tobacco and arms manufacturing”**.

However, in the report designed for members viewing⁵⁹, no mention was made of these comments, some of which were reported to the committee to include:

- “The fund should divest from arms and weapons manufacturers in the UK and globally”
- “Tobacco and arms manufacturing should NOT appear anywhere in the portfolio; they are damaging to life.”
- “Please, no investments which involve breaches of human rights, with poor employment standards, in arms manufacture, in tobacco or fossil fuels”.
- “Please do not invest in companies that yield a high return but bring damaging consequences to our world and society.”
- “it is important that all decisions are ethical and transparent regarding investments.”

Just one pro-arms manufacturing comment was reported, suggesting it might have been the only one, but it was qualified:

- “Arms manufacturers are eminently important at this time. As long as we are investing in properly vetted companies that do not endanger our national interest or security, I am in favour of supporting them raise capital and impact the defence of my home country the UK.”

As highlighted in section 10.9.d the arms manufacturer investments do not appear to be properly vetted as three were instrumental in preparing the Russian military to attack Ukraine and one appears to still be supplying Russia while it threatens NATO.

The arms investment issue was then obscured to a potentially legally improper level in Devon’s 2024 Annual Report⁶⁰ which falsely claimed the results were to a specific question only related to engagement with companies.

⁵⁸ <https://democracy.devon.gov.uk/documents/s41758/Stewardship%20Survey.pdf>

⁵⁹ <https://www.devonpensionfund.org.uk/investments/stewardship-survey-results/>

⁶⁰

<https://democracy.devon.gov.uk/documents/s49414/Pension%20Fund%20Annual%20Report%20and%20Accounts%202023-24.pdf>

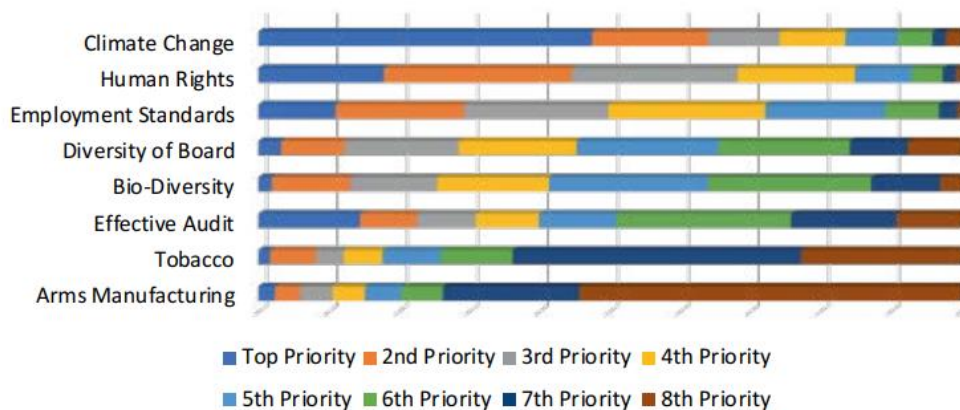
The question was changed from what was asked:

13. In relation to question 9, please rank the following issues in order of importance to you in how the Fund engages with and/or selects the companies in which it invests

To a question only about engagement:

Respondents were also asked to consider the issues on which the Fund should be engaging with investee companies, and to rate them in priority order. The results of this question are summarised in the chart below:

What Issues Should the Devon Pension Fund be Engaging On?



This flipped the result to then present respondents as being utterly blasé about investments in arms manufacturing, and by an inexplicably huge margin, the least concerned to even engage with weapons companies.

In case that wasn't enough, the above manipulated question was used to block any further mention of the arms issue which would have been obviously weirdly inconsistent with the alleged disinterest in engagement.

Despite being the most prominently mentioned type of comment when the report was presented to the committee, statements against arms and tobacco investments were not mentioned anywhere in the committee's 2024 Annual Report to members.

Even in the next section where those comments had been entered by members, a further manipulation kept investing in arms and tobacco from being "other concerns"

Respondents were also given the option to raise other concerns not included in the list above. Other concerns mentioned by a significant number of people included:

- Investment in Russia
- Animal Welfare
- Modern Slavery / Child Labour
- Gender equality
- Investment in China
- Taxation (companies paying tax appropriately)
- Political donations / impartiality

The addition of the filter “not included in the list above”, which was not on the original survey, had the impact of excluding the **“large number of comments opposing investment in tobacco and arms manufacturing”** received. That was despite, following the change of the previous question to being purely about engaging, objections raised about investing in arms manufacturing were no longer covered by that question, so were by the new definition “other concerns”.

The manipulation of both questions deserves to be considered together. It appears that including the 2 issues in the priorities question, in a way that it could be manipulated to give the opposite result by changing the question, was done to also reduce the number of further comments on those issues – the issues appeared to be already covered - while also creating a way to exclude mention of any comments that did come.

The impact is more than just reducing member’s expectation of any immediate integration of those views into the investment strategy. Manipulating the survey to portray the members as being utterly uninterested even in engaging with arms companies, and excluding every arms opposing comment, would falsely portray to the large number of members who did raise that concern, that there were *not* a “significant number” of members who felt the same as them. That could have a desired effect of discouraging those members from pursuing the concern further.

Suspiciously bad (or impressively tricky) survey design, selective reporting of results and even directly misrepresenting results as being to another question, are surely not what a signatory to the code should be engaged in.

It appears the fund is acting in bad faith when, as shown, the fund obscured the results of their engaging with beneficiaries on the issue of arms manufacturers, at the same time as massively increased its investments in arms manufacturing. Despite knowing it is an issue of concern for beneficiaries, in defiance of the code’s principles, it has not reported increasing weapons investments as an outcome or explained why they feel it best serves the social needs of the beneficiaries.

Devon Pension Fund’s chairman did not respond to a request for comment on the above.

12. Which scheme members would be materially impacted?

In the survey carried out by Devon, some scheme members stated an objection to any factoring other than purely maximising returns. Divestment from arms manufacturing and OPT complicit companies is unable to materially affect them as long as the fund isn’t materially financially affected, which isn’t a legally permissible level of divestment.

The only section of beneficiaries who would be materially impacted are those who would be significantly distressed to know their earnings are invested in an industry they are morally opposed to, whose destructive and deadly impact they can hardly avoid seeing on a daily basis in this age of hand-held screens.

As the fund is able to integrate the wishes of those who are opposed to arms investment without materially impacting other beneficiaries, they can go with the action most likely to bring the social benefit, safe in the knowledge that the few members who disagree will not be impacted.

Section 9: The Illegality of investment

As said earlier the very narrowly focused 2024 Giffin Opinion could become, or be deliberately used as a distraction, while there are so many reasons to divest that have lower bars which are easily met. The Opinion may be used to disingenuously claim that the legal angle is fully resolved by this Opinion, and that it thereby serves to give approval for the investments. As said in the previous section, both Mr Giffin and the SAB are explicit in saying that is not the case.

A recent example is found in Bexley Pension Fund advisor's response to a similar challenge to ones received by Devon PF.

5. FIDUCIARY DUTY

5.1 The Bexley Pension Fund is committed to being a responsible investor and a long-term steward of the assets where it invests. The Fund has a fiduciary duty to act in the best interests of its scheme members and this extends to a wide variety of ESG considerations, including the infringement of human rights and violations of international law.⁷⁵

They should properly have stopped there and considered the vast evidence relating to those last 2 examples and what they have positively done after considering it all.

Instead, they went on to incorrectly state, to the effect: "but not if it reduces our profits at all" and moved onto Mr Giffin's Opinion. With it they concluding that there is no international, criminal or public law - that "legally obligates LGPS funds to avoid such investments", while passing over the civil law of fiduciary duty, where they had started by ignoring what they admitted were their legal duties. Their answer only sounds more plausible for its mention of the Giffin Opinion, which doesn't actually back them up.

Still, for an AA committee member who cares for nothing less than his criminal liability it might be worth considering some of the possible gaps in the Opinion.

Mr Giffin KC broke the question of potential legal liability into three parts

1. Has something been done (by Israel or its agents, if one focuses on the complaints made by the current letter) which amounts to genocide, a crime against humanity or a war crime?
2. If so, did the authority or the individual assist that act? Alternatively, did they assist someone else's act of assistance, and
3. If so, did the authority or the individual have the necessary *mens rea*

1: Has something been done which amounts to genocide, a crime against humanity or a war crime?

Mr Giffin says (s.18)

"it is well known that the Prosecutor of the International Criminal Court has applied for an arrest warrant against the Israeli Prime Minister and Minister of

Defence, on the basis that there are reasonable grounds to believe that war crimes or crimes against humanity have been committed. Again, the 12 June 2024 report of the Independent International Commission of Inquiry established by the UN Human Rights Council concluded (at paragraph 97) that in Israel's military operations in Gaza it had "committed war crimes, crimes against humanity and violations of IHL [international humanitarian law] and IHRL [international human rights law]."²⁶

But in section 19 of his opinion Mr Giffin gives a balancing amount of credibility to the already overruled (by the ICJ) denials of the accused (Israel) and the overtly partisan organisation "lawyers for Israel".

The Opinion does not factor in the International Court of Justice's 26th January 2024 finding of plausible genocide. While true that the ICJ is a court for deciding issues between states, their judgement is far from irrelevant. It is likely that an existing finding by the ICJ would inform and influence a national court to consider an accusation of an ICCA offence by non-state actors. The ICJ ruling's exceptionally broad publicity, included live coverage on multiple terrestrial TV channels, would also have a bearing on the issue of mens rea.

It is at least the case that Mr Giffin could have used the January 26th ICJ ruling of plausible genocide, alongside the numerous other rulings and opinions of a similar stance, to conclude it is far from a fully undecided "he says - she says" issue where the AA can't be expected to pick between equally credible sides. The current situation is one where a long bench of the most senior international law judges has already decided that the strongest existing evidence is against Israel.

Mr Giffin by contrast, concludes

s.22 "It is perfectly obvious that an LGPS administering authority is, to put it mildly, not well placed to know whether ICCA crimes have in fact been committed or are likely to be committed in the future. Even if it were to conduct or commission significant investigatory work, which might be thought a questionable use of pension fund resources, and is certainly not something positively required by the criminal law, the authority might very well be left in a state of considerable uncertainty."

s.24 "Against this background [in which he doesn't include the ICJ ruling], it seems to me that the only realistic view to be taken from an administering authority perspective is that Israel and its agents might or might not currently be committing ICCA offences. That such offences are being committed is not a merely fanciful possibility, but it is certainly not obvious that they are, or even highly likely. I doubt that an administering authority without some special and unusual knowledge of the relevant facts could even sensibly say whether the existence of offences is more or less probable than not. I shall return below to what implications this has for the question of mens rea."

The repeated claims of the impossibility of investors to know. The absence of the ICJ ruling which was the event that made it impossible for investors to not know, and all this before even getting to the *mens rea* section, makes it seem that really this is all about the *mens rea*.

There is no credible way to deny what is happening in Gaza and the West Bank. Feigning ignorance will be a weak defence though Mr Giffin does his best to portray the issue as indecipherable for the hapless investor he portrays, but is that credible? For a start the LGPS

Committee members are anything but without professional help or reason to be watchful, which will be gone into later. Even leaving aside the ICJ ruling and numerous others; members of the council could be expected to make their own judgment from widely broadcast footage of the utter devastation of everything necessary for life in Gaza and the frequent reported atrocities committed on civilians sheltering in protected sites such as hospitals and UN facilities.

They should also have considered the highly publicised open letter, signed by over 1000 legal professionals, including a former President of the Supreme Court, numerous High Court Judges and 94 Kings Counsel who do not share Mr Giffin's difficulty perceiving the plausibility of genocidal intent, and who reiterate the key points of evidence that are far from complicated.⁶¹

a. The precautionary principle and reasonable cause to suspect

Mr Giffin claims in s.21 that the normal principles of having 'reasonable cause to suspect' and applying 'the precautionary principle' are unlikely to apply due to the ICCA s66 requiring evidence of intent by Israel and that this would, again, be beyond what a reasonable person could be expected to judge. And again, the flaw in this argument would be more apparent if the ICJ ruling of 26th January 2024 had been mentioned. Central to Article 2 of the Genocide Convention is also a requirement of proving intent. When it was widely publicised that the ICJ found it plausible that, based on the available evidence, Israel was intent to commit not just war crimes but genocide, it was no longer necessary for a lay person to make their own judgement on Israel's probable intent before applying the precautionary principle.

Even if not all violations of IHL are ICCA offences as Mr Giffin points out, and even if the Lawyers for Israel will be challenging it, it is still useful to consider the governments reason for refusing some arms export licenses because in their considered view there is a "**clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian law**". Both the precautionary principle and a reasonable cause to suspect are used.

In s.25 Mr Giffin makes an important qualification all AAs would be wise to comprehend.

"The known factual position in relation to the commission of the alleged offences might of course change in the future. For example, one or more individuals might be charged or convicted before the ICC; or there might be some other authoritative judicial ruling; or a consensus of authoritative opinion might emerge to the extent that a person who committed the necessary actus reus could be said to be at least reckless as to whether what their assistance was facilitating was a war crime."

Arrest warrants were issued for Israel's Prime Minister and ex-Minister of Defence by the ICC, after the date of this Opinion.

2: Did the [investing] authority or the individual assist that act? Alternatively, did they assist someone else's act of assistance

The relevant law he mentions is ss 51 and 52 of the International Criminal Court Act 2001 ("ICCA") which applies to British citizens engaged in "conduct ancillary to" IE "aiding,

⁶¹ <https://lawyersletter.uk/>

abetting, counselling or procuring the commission of an offence.” Which he summarised by saying **“that it is a criminal offence to do something in England which assists the commission of genocide, a crime against humanity, or a war crime, regardless of where the assisted act occurs. Further, if there is a criminal act of assistance, it is also criminal to assist that assistance.”**

In ss.28-33 Mr Giffin’s opinion suffers again from his omitting to include the ICJ judgement of plausible genocide in his weighing up of precedent. The IHRC case he mentions relates to the 2006 Lebanon War which had not been judged as plausible genocide, yet Mr Giffin describes them as comparable **“Here, the allegations about the war are much the same.”**[s.33]

It could be confusing for readers of the Opinion that Mr Giffin dismissed the Peers letter early on as having little merit before quite reasonably moving to a more useful hypothetical scenario, to explore how criminal liability might arise. [s.10] But then returns to the Peers letter where its lack of relevance only helps create a weak case **“the supplies to which the Peers letter refers are, in many cases, ones which might be characterised as supportive of the Israeli war effort, but are not items which would actually be used in the commission of war crimes (if any).”**(s.33)

The same could not be said of the products of companies listed previously in this document. And in this case the recipient of the arms is subject to the provisional judgement of the ICJ ad ICC arrests warrants. Both these points of disparity greatly reduce the comparisons value.

a. Shareholding

The remaining point and due to a lack of precedence, perhaps the most compelling argument in the Opinion, was that so far, investing in a company that commits crimes has been considered far enough removed to allow an investor to escape criminal liability for the company’s activities. But it still feels less than a solid argument.

“There is also a question as to whether investing in a company by purchasing shares in it, certainly if one is talking about minority interests in a publicly quoted company, really constitutes assistance to that company in its activities. Usually the purchase of shares in an already established and capitalised company simply means that one shareholder is replaced by another, without any direct impact on the company’s activities.” (s.35)

Is the assistance in question really guilt free because we are focusing on only one minority shareholder, as if the other 99% of shareholders remove this shareholders guilt by their joint venture; or because if the LGPS didn’t do it someone else might, or that because lots of people are doing it, what’s one more? None of these are criminal defences.

If it helps to visualise the impact of shareholding on a company, we can use what would happen in a sudden sell-off to see how catastrophic that loss of financial assistance can be. After that point it would be crystal clear that anyone who picks up shares is lending an assisting hand and that assistance would be multiplied by the number of further shareholders, but the guilt not divided.

That there is no precedence is a strong argument for saying it is unlikely to happen but of course it does not mean that a new example cannot be set and there is very good reason to believe people with resources will be seeking to set the precedent that shareholding can be in some circumstances culpable assistance, over this and environmental issues.

A combination of relying on the weak examples in the Peers Letter and a lack of precedence on shareholder liability leads to a dismissive conclusion in s.37 which might not be safe to rely on. As mentioned earlier, the SAB still recommend AAs get legal advice regarding their investments.

b. Bonds & other exposure

Many types of financial exposure exist in the pension fund which more directly finance and support a company with liquidity than by shareholding.

The fund holds ordinary bonds, convertible bonds, structured finance credit instruments, Term Loans, Asset Secured Loans, Senior Secured Notes, Senior Unsecured Notes, Subordinated Unsecured Bonds and Perpetual Subordinated Bonds.

The answer can only be as good as the question though and Mr Giffin had been asked about some general Israeli government bonds which he didn't feel were an issue:

36 "I doubt that it could be said thereby to be assisting the conduct of the war, let alone assisting the commission of criminal offences which might be committed during that war.

There might be more room for argument if a particular bond issue was specifically to finance military operations in Gaza, but that does not seem to be what happens in practice."

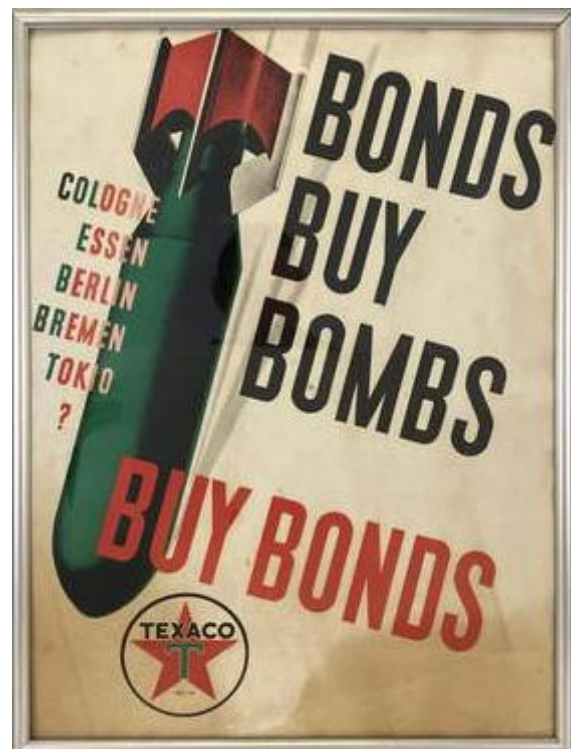
It is worth noting in 36 he clarifies twice that he understands the point of bonds is "to finance". That has always been their purpose.

Rather contrary to that, in 38 he then says "I am still extremely sceptical (especially for the reasons given at paragraph 35 above) that one assists the activities of a company merely by investing in it;"

Again, it is an example where his Opinion suffers from using very weak examples when in the Devon fund there are just the kind of examples he warns might have prompted a different Opinion.

Of the weapons companies, bonds helping to finance Rheinmetall and Safran stand out among others.

Possibly the most likely to be found legally complicit exposure in the funds, is the purchase of Subordinated Unsecured Bonds from Bank Hapoalim & Bank Leumi. Both Banks provide finance for illegal settlement in illegally Occupied Palestinian Territory and are listed by the UN for doing so. There is little doubt that this is financially assisting the ethnic cleansing of Palestine.



c. Legal & General Investment Management's Opinion

LGIM, in explaining their rationale for excluding companies that produce controversial weapons, said: **“in many more jurisdictions it is illegal to use these weapons; therefore as a responsible investor we do not want to be financing them”**⁶²

It seems clear the legal opinion LGIM received was that investments by them would “finance” those weapons’ production.

The sleight-of-hand phrase “responsible investor” is also on display again. Always the layman can understand it as comforting assurance of an ethical approach, while really meaning there is a financially material reason for not financing them: In this case legal or reputational risk.

d. Committees claiming they *are* directly funding arms

A claim made by some pension committee members is that arms investment is necessary financial support of the arms industry which they feel is needed for national defence. Claiming that the investments really do finance the arms industry argues against the Giffin Opinion; in affect arguing that they have more complicity than the Opinion states.

3: Did the authority or the individual have the necessary mens rea?

As Brunel, AAs and the LAPFF all admit to having received communications expressing concern about this type of investment for years there should be an expectation what they will be especially watchful in this context. The stock response is that they “closely monitor” companies the UN flags. And: “Brunel reviews, at least annually, its exposure to the West Bank/Gaza using information provided by the United Nations and other parties”⁴

The insincerity of Brunel’s close monitoring and reviewing has allowed huge increases in holding of shares and new bond purchases of 6 weapons companies specifically highlighted by the UN as suppliers of a state who it has good reason to believe is committing war crimes and genocide.³

Considering it has been over a year since October 7th 2023, even if they were somehow fully ignorant of what was happening throughout the year and did no more than a strictly once a year review, there would be no realistic claim of ignorance about what Israel is doing with the weapons from the companies they admit they closely monitor. Where is the wiggle room to claim ignorance?

A clear example of knowing assistance is found in the sequence of events for the purchase by Brunel of shares in Renk Group, the manufacturer of the gearbox without which Israel’s Merkava tanks could not be used in the commission of war crimes:

- During Q1 there was a very comprehensively publicised ICJ ruling of “plausible genocide” (Jan 26th).

⁶² <https://www.lgim.com/landg-assets/lgim/document-library/capabilities/lgimh-controversial-weapons-policy.pdf>

- On February 7th 2024 Renk Group is floated and the share price jumped 27%. The CEO was internationally publicised (by Reuters) crediting Israel's assault on Gaza as the reason the shares were doing well. **"Everything above the issue price is a great message to the market," Renk CEO Susanne Wiegand told Reuters. "The attacks on Israel and the subsequent war in Gaza was a turning point and changed investor sentiment towards defence," she added.**"⁶³
- April 5th 2024 The UN Human Rights Council called for all nations **"to cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel, the occupying Power...to prevent further violations of international humanitarian law and violations and abuses of human rights"**.⁶⁴
- At the end of Q2 Brunel are seen to have added Renk Group to their active TM Brunel Smaller Companies Equities Fund with a multimillion Euro investment.

Brunel is a regulated professional investment firm. The LGPS pay Brunel in the region of £12 million a year for the professional expertise of their 80 staff.⁶⁵ There is no doubt Brunel would have done considerable research before the investment. They will intimately know what Renk produce and who they supply. They will have seen the statements of the CEO at the time of the floatation. They are fully aware that contributing to a company by shareholding will contribute to their growth and operations.

It is clear Renk Group is assisting Israel during a plausible genocide with products required to continue the action described as genocidal.

It is clear that Brunel is knowingly assisting Renk Group, their investments are anything but reckless or passive.

4. Conclusion

The abundant evidence of war crimes is clear in the public domain and continuing to be documented, often with video evidence gathered from the perpetrators themselves proudly proclaiming their intent to ethnically cleanse by way of a genocide.

It is credible to say that there is a good chance at least some of the thousands of pieces of evidence of war crimes will one day contribute to a proven case.

The thing that is most uncertain is who might become embroiled in the cases. The more complex the law, the less predictable the outcome and the harder it is to know the safety margin. The wise investor and investment fund would therefore stay a good distance away from anything that could be conceived as assisting anyone conceivably assisting a genocide.

Just considering the legality of the investments has already (presumably) cost the LGPS tens of thousands of pounds for Mr Giffin's opinion. If there is a risk the board members could receive criminal accusations the legal fees for even a successful defence could easily outweigh the slight financial benefit from these shareholdings over less controversial investments.

⁶³ <https://www.reuters.com/business/aerospace-defense/renk-makes-trading-debut-frankfurt-stock-exchange-2024-02-07/>

⁶⁴ <https://news.un.org/en/story/2024/04/1148261>

⁶⁵ <https://www.brunelpensionpartnership.org/wp-content/uploads/2024/03/Brunel-Pension-Partnership-Annual-Report-Financial-Statements-2024.pdf>

Section 10: Smoke screens and usual excuses

1. Ethics washing

In Brunel's Responsible Investment and Stewardship Outcomes report 2024

“We consider, both as part of the selection process and in our ongoing engagements, whether companies the [portfolio managers] invest in comply with all legal requirements and the duty to respect all internationally recognised human rights ... including the United Nations Guiding Principles on Business Human Rights (UNGPs)”

The UNGPs have specifically advised divestment since at least 2014. In their “Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory”⁶⁶

“Where a business enterprise finds that it causes or contributes to, or that it may cause or contribute to an adverse human rights impact, it should take the necessary steps to end or prevent such impact and use its leverage to mitigate any remaining impact by other parties involved, including parties with which it has a business relationship, such as a suppliers and subcontractors.

“While an enterprise may have less control or influence over adverse human rights impacts caused by another party with which it has a business relationship, Guiding Principle 19 provides specific guidance as to appropriate action to be taken in such cases. Several factors enters into the consideration of what would be appropriate action in a given situation, including the extent of leverage the enterprise has to effect change in the wrongful practice of an entity (business, governmental or non governmental) with which it has a business relationship, the severity of adverse human rights impact, and how crucial the business relationship is.

“Simply put, where an enterprise is unsuccessful in mitigating risks of adverse human rights impacts, despite its best efforts to use and seek to increase its leverage, it should consider ending the business relationship. Moreover, as long as an enterprise is in a business relationship with an entity which causes or contributes to adverse human rights impacts it should be able to demonstrate its own ongoing efforts to mitigate the impact.

“The Working Group notes that there are several examples of business enterprises that have decided to disengage from relationships or activities associated with the settlements in the OPT due to the risks involved. For example,

- in early 2014, the Dutch pension fund manager PGGM decided to divest from Israeli banks that operate in or provide financing to construction of the settlements.
- The Dutch water firm Vitens disengaged from its relationship with Israel's national water company Mekorot, in December 2013, citing the political context of the settlements.

⁶⁶ <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/OPTStatement6June2014.pdf>

- In September 2013, the Dutch engineering enterprise Royal HaskoningDHV similarly decided to withdraw from a sewage treatment project that would service settlements in the OPT.
- Denmark's largest bank, Danske Bank, has included the Israeli bank Bank Hapoalim in its list of entities that are excluded from its investment portfolio, due to the bank's activities in the settlements.

It seems impossible that Brunel can be unaware of this UNGPs statement or that they don't know that they continue to investment in companies that others have divested from. In their Responsible Investment and Stewardship Outcomes report 2024 they state:

“Brunel reviews, at least annually, its exposure to the Occupied Palestine Territories using information provided by the United Nations and other parties. This information informs both our stewardship and risk processes. We expect our managers to be aware of all material investment risks relating to the companies in which they invest, including those with significant exposure to areas of conflict.”

Considering 10 years have elapsed since the UNGPs statement was published one of two things must be true. The LGPS and / or Brunel have tried to use their influence and failed to effect change, and then failed to divest. Or Brunel is merely paying lip service to following the UNGPs and are dishonestly engaging in “ethics washing”.

Rather than being any defence, the surreptitiously crafted wording by Brunel, which with careful literal dissection might appear to reveal some plausible deniability, instead shows a clear intent to deceive potential and existing scheme members, undermining trust and transparency which are both crucial in a fiduciary relationship.

2. “Don't concern yourself, we'll be engaging”

As Devon's Investment Strategy Statement says **“The Devon Fund's policy is to prioritise engagement with companies over divestment to effect change.”** It might appear to committee members that this works, when companies they have engaged on climate issues are en route to encompass climate goals anyway, but it should not be a perpetual excuse for not divesting where it is clear the fund does not have the ability to effect change. The UNGPs are quite clear on this. The fund must be in one of only two stages, either:

1. **“as long as an enterprise is in a business relationship with an entity which causes or contributes to adverse human rights impacts it should be able to demonstrate its own ongoing efforts to mitigate the impact.”**

In that regard it should be possible for scheme members to request evidence of the efforts made to prevent, for example Renk Group supplying tank gearboxes to Israel. When they predictably fail to effect that change, to follow the UNGPs as claimed, they should divest:

2. **“where an enterprise is unsuccessful in mitigating risks of adverse human rights impacts, despite its best efforts to use and seek to increase its leverage, it should consider ending the business relationship”**

The reality of the outsider's lack of influence is plain from the examples of companies mentioned earlier that disengaged – even companies that are directly heavily engaged cannot change the trajectory of Israeli settlement building and have to disengage.

Norway's largest pension fund KLP, has assets of over £81 billion compared to Brunel's pool of £31 billion. KLP had a \$69 million holding of Caterpillar Inc. Brunel still has approximately \$14.5 million.

This is what following the UNGPs should look like:

“Norway's largest pension fund KLP said on Wednesday it will no longer invest in Caterpillar Inc because of risk that equipment sold by the U.S. group to Israel is used to demolish Palestinian homes and infrastructure, including in the Gaza war.

The maker of bulldozers and other heavy machinery may be contributing to human rights abuses and to the violation of international law in Gaza and the West Bank, and has thus been excluded from the portfolio, KLP said.

The fund manager held shares in Caterpillar worth 728 million Norwegian crowns (\$69 million) prior to a June 17 decision to divest its stake.

While KLP had engaged in a dialogue with Caterpillar over several months, it did not receive satisfactory assurances that the company was able to reduce the risk of violating the rights of individuals, the asset manager said.”⁶⁷

KLP held 0.041% of Caterpillars nearly \$200 billion market cap and it wasn't enough to influence them. Brunel's 5 clients that are in the Paris aligned fund have the combined influence of 0.0074% of Caterpillars market cap.

It lacks any credibility for the Funds or LAPFF to continue to claim that at least 'having a seat at the table' by not divesting will preserve their ability to influence them with “engagement” to stop their core business. It is no more than a disingenuous way to put off calls for divestment.

An astonishing example of engagement blocking divestment was reported on in 2019 when the LAPFF attempted engagement with weapons manufacturers over their role in Saudi Arabia's assault on Yemen.⁶⁸ A number of things stand out.

- They didn't try to engage until prompted by protestors
- They have no faith in the system admitting they “expected little or no response”
- Only 3 out of 9 companies responded

They tried a few ways to effect change. The Kafkaesque logic of approach one was:

- **“Defence companies often espouse the principle of stakeholder engagement”**
- **“Affected communities – such as the Yemeni population being bombed – are not included in the scope of stakeholders considered”**
- **The victims not being considered as stakeholders “likely affects the decision making about the impact of the products and services these companies offer.”**

⁶⁷ <https://www.reuters.com/business/finance/nordic-fund-klp-excludes-caterpillar-portfolios-due-israel-sales-2024-06-26/>

⁶⁸ <https://www.brunelpensionpartnership.org/wp-content/uploads/2019/11/LAPFF-Engagement-Report-Q3-2019.pdf>

- **“LAPFF pushed for [weapons] companies to consider communities affected by these companies’ products and services as stakeholders.”**

Unfortunately, the wording of that pushing isn’t available to see, but in case it wasn’t enough, the second approach was to encourage Boeing to use its **“leverage in being able to push governments to comply with international human right standards.”** To encourage Saudi Arabia to not use the JDAM munitions which Boeing had just sold them.

The third approach was encouraging bomb manufacturers to change their core business to cyber security and then stop doing what makes them profitable to invest in, making bombs.

Having failed to influence in any way the 3 companies that replied, or the 6 that didn’t, the LAPFF highlighted the hypocrisy of the weapons manufacturer’s ethics-washing statements:

- **“All of the defence companies reviewed for this engagement had values such as ‘respect for life’ and ‘integrity’.**

Then outlining the impossibility of these companies doing other than what they do:

- **“It is hard to see how companies can uphold these values if they are trapped in contracts that, by definition, require them to betray these values.”**

and then inexplicably proclaimed their engagement was a success:

- **“Therefore, LAPFF will continue to apply what it has learned so far in engaging with defence contractors to work with these companies to uphold not only their own values, but LAPFF’s policies too. The engagements are not easy or straightforward, but at least now there appear to be ways to move the human rights agenda forward in a way that should produce more sustainable returns for LAPFF members, as well as other investors.”**

Honest reflection on these matters should lead to accepting that divestment from companies in this area is the only realistic way to comply with the UNGPs. The LGPS through Brunel still hold millions of pounds of shares in at least 5 of the 9 companies mentioned in that report including 3 - Thales, General Electric and General Dynamics - that refused to engage at all 5 years ago, and who are now a year into, by all reputable legal opinions, arming a criminal and genocidal assault on Gaza.

General Dynamics, who previously refused to engage, along with BAe Systems and Boeing who did engage but clearly have not improved sufficiently, are now listed under special procedures by the UN Office of the High Commissioner for Human Rights **“These companies, by sending weapons, parts, components, and ammunition to Israeli forces, risk being complicit in serious violations of international human rights and international humanitarian laws ... possibly including genocide”³**

a. LAPFF admit defeat on influencing weapons manufacturers

A further 2 years on from their failed attempt, the 2021 LAPFF Annual Report⁶⁹ admit there is no way to meaningfully engage with weapons manufacturers.

⁶⁹ <https://lapfforum.org/wp-content/uploads/2021/12/LAPFF-Annual-Report-2021.pdf>

“LAPFF has engaged with weapons manufacturers on several issues since 2014. One of the areas in which LAPFF has engaged defence companies is their impact on communities affected by their weaponry. For example, to what extent do these companies consider collateral damage? They would be aware that their weapons are being used in a way that leads to death and famine amongst the Yemeni population. Overall, the companies noted that the objective of their weapons was to cause destruction and that the decision to do so was a sovereign state decision in which they could not get involved. LAPFF pushed back and asked whether there were other ways to think about ‘smart’ weapons that met countries’ strategic objectives without causing extensive damage to civilians or contributing to the commission of war crimes. To this end, LAPFF joined an investor call with BAE to see if communities impacted by defence companies’ weaponry are now on defence companies’ radars, so to speak. Unfortunately, it does not appear that this is the case.”

And still the Funds and their advisors fend off calls for divestment from these companies with intelligence insulting talk of “closely monitoring” and their preference for engagement.

During an evidence gathering session of the All-party Parliamentary Group for Local Authority Pension Funds, on Responsible Investing, Colin Baines, Investment Engagement Manager, Friends Provident Foundation, stated in relation to arms investments:

...the divest-engage debate had been raging for years and that if you were doing either, you were doing more than most. CB stated that the engagement has to be meaningful. He stated investors had to “set targets and have open reporting and objectives and regular reappraisals and ultimately divestment has to be left on the table if engagement doesn't succeed.”⁷⁰

This almost lone voice would not be considered a radical thinker if there was any sincerity in the industry. To never divest, is to greenlight every company to disregard every engagement. Both the investment managers and the unethical companies are of course delighted to keep the engagement process the zero-impact theatre for beneficiaries it clearly is.

Some funds are surprisingly open that they will never divest, no matter the behaviour of a company or their response to engagement, and even that they will totally disregard the impact on the fund’s beneficiaries. West Midlands Pension Fund’s RI FAQ is stunningly clear in giving companies a blank cheque to be unethical:

Q. Does the Fund exclude investments on the basis of environmental, social and governance factors?

A. As a matter of principle, the Fund adopts an engagement rather than an exclusion approach to investment decision making. If companies indirectly or directly involved in subjectively deemed unethical activities were excluded for investment purposes, there would be very few companies left in which to invest.⁷¹

It remains to be seen how a blanket refusal to considered social impact on beneficiaries “as a matter of principle” can be considered in compliance with the Stewardship Code 2020, of which they are signatories.

⁷⁰ <https://lapffforum.org/wp-content/uploads/2021/01/Minutes-of-the-APPG-LAPF-May-2021.pdf>

⁷¹ <https://www.wmpfonline.com/investments/responsible-investment>

At this stage the claims to be engaging are clearly no more than dishonest diversionary platitudes, which the Fund can have no credible claim to a genuine intention of honouring. Dishonesty is certainly an issue of failed fiduciary duty which could be challenged in court.

b. Brunel's shareholder voting example

Even if there was genuine belief to engage on social factors with weapons manufacturers, during 2022/23, the Devon fund reported, of 11,594 votes against companies' management, only a total of 128 were on all "social/human rights/diversity".⁷² The only weapons related AGM proxy vote to be seen was by Brunel.

In 2023 an institutional investor raised concerns that Microsoft, through a half billion-dollar defence contract, would turn their gaming headset into "a weapon of war", and the IT company they were invested in would therefore become a weapons manufacturer. They proposed an independent third-party report due to their concerns.⁷³ Brunel voted against this request for enhanced diligence.⁷⁴

3. "We don't own the shares..."

"...we only jointly own a company which has employees we pay to buy the shares on our behalf, with our money, following our instructions, and who provide details of the proportion we own of those shares within the fund down to the penny, which we sign off on quarterly and retain full legal responsibility of oversight for."

It is a puzzle why so many times the professional advisors and even Nigel Giffin KC in his Opinion rest the share and bond holders' innocence heavily on the share or bond being within a Brunel or LGIM managed fund. The funds already exclude cluster munitions because the AA doesn't want to own them within the Brunel funds, proving that they do consider that what is in the "passive" funds is actually an issue of reputational risk for the scheme.

AA committee members should consider it a red flag for the integrity of any advisor who uses the "we don't own them" ruse.

And also wonder about an advisor who first says, in effect, "The shares are barely anything to do with us, they are in some remote fund we don't control." and a few sentences later the stock "we're engaging" platitudes are used with claims of actually owning companies:

"The Bexley Pension Fund is a responsible owner of companies and cannot exert that positive influence if it has divested from companies. Bexley is a LAPFF member, the officers of which have experience of engagement with global companies operating in conflict zones."⁷⁵

⁷² <https://www.devonpensionfund.org.uk/investments/stewardship/>

⁷³

<https://www.sec.gov/ix?doc=/Archives/edgar/data/0000789019/000119312523259247/d356108ddef14a.htm>

⁷⁴ <https://www.brunelpensionpartnership.org/wp-content/uploads/2024/05/Brunel-Passive-Equities-Voting-Records-Q4-2023.xlsx>

⁷⁵

<https://democracy.bexley.gov.uk/documents/s116268/Item%206.1%20Exposure%20to%20Israel%20and%20the%20Occupied%20TerritoriesCUPIED%20TERRITORIES%20-%20CP%2021.11.24.pdf>

The LAPFF experience of engagement mentioned must refer to the incredible 2019 example highlighted in the last section, as it's the only one to be found.

It really isn't as impenetrable a smoke screen as they believe, the subterfuge relies entirely on people trusting that there is substance behind the words of the advisors, easily dispelled by the sort of research which would happen with a legal challenge demanding a Fund prove the substance behind the responsible and ethical branding they use to dishonestly entice people to trust them with their earnings.

There is a relevant paragraph in the UK Stewardship Code 2020: **“The Code contains more detailed reporting expectations for listed equity assets. This reflects the relative maturity of stewardship for listed equity assets. However, signatories should use the resources, rights and influence available to them to exercise stewardship, however capital is invested”** It still matters no matter how it is packaged up.

4. “It is too complicated to divest” – Blackrock/LGIM etc

On the one hand it is said the funds are pooled to give greater leverage and influence. On the other hand, the pooling of the funds is claimed to be the reason the funds have less or even no control over what is invested in.

Blackrock have a team specifically for tailoring products for LGPS needs.⁷⁶ BlackRock already offers nearly a thousand funds and indices. They also develop custom indices tailored to specific investment strategies and client needs. It is merely a question of the pool company having the will to make the switch to an ethical investment strategy, which has to be dictated to them by their owners - the Administering Authorities. Currently it looks more like AAs ask the pool companies, rather than tell them.

⁷⁶ <https://www.blackrock.com/uk/professionals/solutions/clients/local-authorities>

Brunel, with the power lent it by the pension scheme members money, is far from a passive player in this market. Brunel collaborated with FTSE Russell to ensure the product is suitable for its clients.⁷⁷

NEWS

Brunel transitions £3bn+ of passive funds to new FTSE Russell Paris-aligned benchmarks

Today Brunel opened the London Stock Exchange to mark its transition of more than £3 billion to the new FTSE Russell Paris-aligned benchmark series that we developed in coordination with FTSE Russell, the index, data and analytics provider.

Five client members of the Brunel Pension Partnership took the decision to switch passive fund allocations to the new series of FTSE benchmarks, which harness data across a range of climate factors to provide a climate-linked tilt exposure – and achieve Paris alignment. The five client pension funds are:

- Wiltshire Pension Fund
- Oxfordshire Pension Fund
- Environment Agency Pension Fund
- Devon Pension Fund
- Avon Pension Fund



It was then an active choice Devon and 4 other clients made to switch to this index which they should have inspected to make sure it aligned with the broad interests of the scheme members. Fortunately, it is possible for that alignment to be corrected:

“Crucially, the indices are also designed flexibly, in order to enable them to evolve as data improves, in line with research developments.”⁷⁸

It is no work for LGIM to exclude a few companies from the Paris fund. The complication of other clients being in the fund could be addressed with a meeting or two. All funds are currently receiving similar requests and they might welcome the news that, despite what their advisors claim, the committee members don’t have to take any unnecessary flack and reputational harm but can legitimately divest as per existing regulation and fiduciary duty.

⁷⁷ <https://www.brunelpensionpartnership.org/2021/07/06/brunel-and-ftse-russell-launch-paris-aligned-benchmarks/>

⁷⁸ <https://www.brunelpensionpartnership.org/2021/11/02/brunel-transitions-3bn-of-passive-funds-to-new-ftse-russell-paris-aligned-benchmarks/>

5. “It will cost too much to divest”

The perpetually disapproving council officer will make a vague claim that there will be financial penalties to divestment but usually without going into detail, probably hoping the desire will fall at other hurdles they put in the way before getting that far.

There are transaction fees to liquid stock trades but as most of the weapons company shares have risen in value, the difference would very likely cover any fees. Bonds can usually be traded at any time on the secondary market, they might not yet have paid interest but they could be marked for sale as soon as they have.

Taken as a whole though the weapons companies have risen significantly since October 7th so the profits could be taken together to cover costs of a decisive divestment in related companies without delay.

6. Just don't rely on the officers

Core to the council officers' job is to be diligent, honest and forthright when assisting the elected representatives. It appears for too long they have become used to very minimal to no oversight.

When Devon asked for a factual statement of exposure to arms manufacturers and OPT complicit companies, their officers stated as fact there were £12 million passive shares and no bonds or active traded shares. This document forced them to admit their information was incomplete. It is actually \$61 million and there are bonds and active shares. It seemed the desire was to underplay the level of exposure. Or a severe lack of diligence.

When Hammersmith & Fulham's officers produced their factual statement “to discuss the fund's exposure to the weapons sector”⁷⁹ They put the companies into a table. The first 9 were indeed arms manufacturers. The total was a mere £2 million and 0.149% of their fund.

From that point the table was filled with 16 further random seeming companies with no, or almost no, relation to arms manufacturing – steel industry, pharma, life sciences, Google, Microsoft and even Walmart. They were significant holdings which bulked the numbers to £48 million and 3.5% of the fund. A whopping 2233% inflation of the total.

It seems the desire was to take the number from a very insignificant figure, which would be no issue to divest in order to align with members ethical views, to a more problematic figure, where it could be said prioritising profits would be more in keeping with their duties.

7. “We can't take a political position”

A common misdirection by council fund officers, is to mischaracterise the demand of scheme members enquiring about divestment as being a demand to align with their political view.

Two separate London funds did this within a week of each other. Much of the response was almost copied and pasted between the responses, despite the questions being different:

On 26th November 2024 Hammersmith and Fulham officers released their “discussion paper” to enable the committee to discuss **“the Fund’s exposure to the weapons sector, and decide whether further action is required.”**⁷⁹

On the 3rd of December 2024 Bexley officers presented a document to help the committee consider **“exposure to investment associated with Israel and the occupied territories.”**⁷⁵

Both of them are ethical and human rights issues. Falling under the social category of ESG.

Both officers accepted that they have a fiduciary (legal) duty to consider social factors where it might be in the interest of members:

Hammersmith and Fulham:

3. Fiduciary Duty

3.1 The LBHF Pension Fund is committed to being a responsible investor and a long-term steward of the assets in which it invests. The Fund has a fiduciary duty to act in the best interests of its beneficiaries and this extends to a wide variety of Environmental, Social and Governance (ESG) considerations, including the infringement of human rights and violations of international law.

All of the Bexley document in sections 5 and 6 is a very slightly reworded copy of Hammersmith’s sections 3 and 4.

Bexley:

5. FIDUCIARY DUTY

5.1 The Bexley Pension Fund is committed to being a responsible investor and a long-term steward of the assets where it invests. The Fund has a fiduciary duty to act in the best interests of its scheme members and this extends to a wide variety of ESG (Environmental, Social and Governance) considerations, including the infringement of human rights and violations of international law.

As shown in s.8 of this document, the consideration should then be of the 2-part question:

1. Is there good reason to think this is what our members want?
2. Would divestment risk significant financial detriment to the scheme?

The discussion documents from the officers should have included a financial impact statement and a consideration of members views. Neither were included.

Instead, it purely emphasised that there was a responsibility to consider financial returns and at the point of admitting ESG was a factor, both did a sleight-of-hand where they began saying, quite irrelevantly **“It is not appropriate for investment decisions to be driven directly by political views”**.

Politics had nothing to do with the ethical point at hand but it shows that any ESG factor will be dismissed if the officers, at their discretion, can claim it is “political”.

⁷⁹ <https://democracy.lbhf.gov.uk/documents/s129591/Item%204%20-%20Arms%20and%20Weapons%20Discussion%20Paper.pdf>

- 3.4 Arising from these duties, financial factors must always be taken into consideration in the setting of the investment strategy. Under the LGPS Investment Regulations 2016, administering authorities are required to include in their investment strategies a policy on how ESG considerations are taken into account in the selection, non-selection, retention and realisation of investments.
- 3.5 It is not appropriate for investment decisions to be driven directly by the political views of committee members, except as where prescribed in law, e.g., under the Sanctions and Anti-Money Laundering Act 2018. The Supreme Court held, in its judgment on the Palestine Solidarity Campaign case, that it is not appropriate for political preferences, whether local or national, to take precedence over what is required under the fiduciary duty.
- 3.6 This makes pension fund committees different from other local government committees that are dealing with service provision, and which have to make political choices about the prioritisation of scarce public resources.
- 3.7 Thus, pension fund committees are required to focus on ensuring that good investment decisions are made in the best interests of scheme members, taking into account all relevant considerations and excluding irrelevant ones, with committee meetings not used as a forum to set out political positions.
- 3.8 Scheme members and the public have a right to lobby the administering authority and peacefully protest against decisions but, when acting within the fiduciary duty, the administering authority is legally obliged to limit itself to acting in the best interests of scheme members.

Further Considerations

- 4.1 The Supreme Court ruling of 29 April 2020 ruled that the administering authority can take into consideration beneficiaries' ethical and moral concerns into account when devising an investment strategy. However, as per advice from the LGPS Scheme Advisory Board (SAB), it is not appropriate for investment decisions to be driven directly by political views, except as where prescribed in law.

It seems particularly disingenuous, in 3.5 to portray the *Palestine* Supreme Court case as relevant in this context. The case was brought to prevent the government's anti-divestment political view overriding scheme members ability to divest on ethical grounds. To have that turned on members by misrepresenting their ethical view as being political, takes cynicism to a new level.

The officers then moved to the other misdirecting irrelevances of whether the investments were breaking criminal law or committing terrorism.

- 7.3 The Fund has not found any evidence of its asset managers breaching any international laws and are satisfied that due care is taken in regard to local laws surrounding human rights.
- 7.4 It is therefore recommended that the Committee should not take any divestment action. The Fund will continue to encourage positive change on all ESG factors, while officers will continue to engage with the investment managers to monitor investment performance, including consideration of human rights, international law and other ESG issues.

Above was from the Bexley fund in relation to their question on the human rights of Palestinians. The local laws referred to must be Israeli law which is not a sound benchmark for Palestinian human rights, and presumably “local laws” was chosen as the International Court of Justice had already as of 19th July found Israel guilty of apartheid:

“In a historic ruling the International Court of Justice has found multiple and serious international law violations by Israel towards Palestinians in the Occupied Palestinian Territory, including, for the first time, finding Israel responsible for apartheid.”⁸⁰

But of course, the officer would know that, as they always promise to the members, while operating under their fiduciary duty to be truthful, that they will **“continue to monitor human rights and international law.”**

8. “The SAB say we can’t listen to protestors”

Recent SAB guidance⁸¹ mentions two things which should not be influential on LGPS AAs:

1. As decided in the Supreme Court, it would be inappropriate for the British government’s political preferences; it’s ministers and its foreign policy to control the investments made by the scheme.
2. Local protestors.

However, the guidance on this second point appears to be poorly understood and campaigners are often dismissed with a pat response based on this SAB direction:

“The LGPS Scheme members and the public do have a right to lobby the AA and peacefully protest against decisions. It may help to engage with those organising protests and explain to them that Pension Committee members and officers cannot allow themselves to be unduly influenced by these representations. When acting within their fiduciary duty the AA is legally obliged to limit itself to acting in the best interests of scheme members and the views of local residents generally on ESG matters is not relevant.”

The key word is “unduly”. A synonym for “undeservedly”.

SAB guidance does not prevent the AA from taking on board and aligning with the concerns and recommendations of any protestors if they have highlighted legitimate issues with the

⁸⁰ <https://www.hrw.org/news/2024/07/19/world-court-finds-israel-responsible-apartheid>

⁸¹ https://lgpsboard.org/images/Other/SAB_Statement_Fiduciary_Duty_Lobbying_Sept2024.pdf

administration of the fund, for example in not following its stated principles on human rights.

That part of the SAB guidance is only to say the AA must not bow to pressure merely because it is pressured. That would be being unduly influenced, while there is no prohibition to being duly influenced.

a. Do campaigners need to be scheme members?

As above anyone can raise a genuine issue and the AA should consider it. However, whether tax-payers have a legitimate interest (though not a controlling interest) in the management of the LGPS was clarified in the 2020 supreme court *Palestine* judgement:

“78. The relevant provisions of the 2013 Act apply to both funded and unfunded schemes. In the case of funded schemes like the LGPS, the funding for them has been provided by the state in the past (by funding the employers’ contributions from taxation and also funding the salaries of relevant employees from taxation, out of which employee contributions have been made) and continues to be provided and underwritten by the state into the future (subject to the employers’ cap). This is one reason why such public pension schemes are liable to be identified with the British state (para 58 above). It is also a further reason why the government and taxpayer have a legitimate interest in regulating how public sector pension schemes manage the money which is provided to them.”³⁰

9 “Our investments help defend democracy”

It is perhaps the most plausible sounding reason given against a full divestment from the arms industry, but in reality, it is sadly misguided.

As any advisor should confirm it is not a function of the LGPS to actively support any industry over another, including the “defence” sector. As *Palestine* clarified it is also not the Funds function to support any political ideology.

It is in any case grievously mischaracterising the weapons manufacturers as primarily interested in “defending democracy”, freedom and the rules-based order. “On the one hand the weapons *are* used to obliterate a civilian population in Palestine, but at least they are supplying Ukraine...”

Even if that somehow sounds like a fair trade, it is far from a black and white issue.

a. These are not “war bonds”

Weapons companies are mainly financed by selling weapons. Other than IPOs and FPOs shareholders do not put money in, they buy the shares on the secondary market hoping they'll appreciate, or to take money *from* the company as dividends.

The scenario where probably more scheme members would agree to arms investment – their country backed up against the wall by a superiorly armed aggressor and manufacturers needing a cash injection with war bonds. That is a quite different and specific scenario, which is clearly not where we are today. Rather we see an over funded arms industry appearing to want a for-profit conventional weapons arms-race with Russia and selling weapons to Netanyahu to drop on practically defenceless civilian populations.

The requested divestment of ordinary shareholding in ordinary times does not necessarily exclude purchase of “war bonds” at a time of genuine national crisis.

b. Private companies are for private gain, not national defence

Some may fondly remember a nationalised British Aerospace making the Tornado and Harrier Jump Jet, however the Thatcher years saw it privatised and these are now the people who own BAe Systems:

- **Capital Group Companies:** Holds approximately 14.18% of shares.
- **BlackRock:** Owns about 9.90% of shares.
- **Invesco:** Possesses around 4.97% of shares.
- **Barclays:** Holds approximately 3.98% of shares.
- **Silchester International Investors:** Owns about 3.01% of shares.

While a nationalised defence company might be relied on to put national interests ahead of profit, a for private profit arms company clearly cannot. Instead, it relies on fear promotion to allow national funds to be funnelled into those international private companies.

If America’s continual wars stopped, the shares would dramatically fall in value and the dividends would dry up. Would the above owners allow that? So, these investments incentivise perpetual war.

c. Arming both sides of conflicts

The indiscriminate profiting from the trade in weapons has a long history of promoting war by arming both sides of a conflict, certainly with no regard for foreign lives but also no concern that that might put British people in harm’s way.

For example, companies armed both sides of the Iran - Iraq war in the 1980s including: BAe Systems, Boeing, Lockheed Martin, Thales, Dassault Aviation, General Electric, Ferranti (later to become a part of BAE), Siemens and Triton.

And more recently the products and services of Western companies are reported as equipping Russia’s war on Ukraine: Boeing¹⁰⁸, Thales, Safran, Raytheon, Honeywell⁸², Rheinmetall, and Oto Melara⁸³.

As shown in section 10.9.h Swiss arms companies armed both Russia and Ukraine in the run up to the war and are now profiting massively from sales to neighbouring countries.

A 2022 arms fair in Saudi Arabia, where BAe Systems was a “Premium Partner” sponsor, hosted four major Russian weapons manufacturers promoting the tanks, drones and other weapons they use in Ukraine.⁸⁴

⁸²

https://www.defensemirror.com/news/8955/honeywell_to_supply_300_turboprop_engines_for_russia_s_antonov_an_22_upgrade

⁸³ <https://www.army-technology.com/news/newsrussia-army-testing-italian-centauro-tank>

⁸⁴ <https://www.opendemocracy.net/en/exclusive-uk-firms-bankroll-arms-fair-where-russia-shows-off-weapons/>

This is not the behaviour of “enemies”. It is clearly a money-making game to them, while knowing no one from sales will be killed on a battlefield.

d. Training and Arming Russia, China and Iran

In the early 2000s Russia’s military was a stockpile of mostly obsolete cold war era equipment and munitions, and poorly trained soldiers. Despite Russia’s victory in Georgia the war highlighted their weaknesses in equipment and training, prompting the “Serdyukov reforms”. For example, their tank operators had only outdated personal night vision and their fighter jets lacked the ability to navigate by GPS in GNSS- denied areas which meant if they attacked a NATO ally they would have had to navigate by maps. Without military modernisation it might have been the case that Russia would not have risked invading Ukraine.

Rheinmetall:

The current ISS allows Brunel to allow LGIM to have shares in the Paris Aligned Fund, the proportion belonging to Devon is €906,063. On behalf of the Fund Administrators, Brunel have been additionally actively assisting Rheinmetall with a purchase of €131,000 in bonds.

In 2011 Rheinmetall secured a contract valued at approximately €100 million to construct “the world’s most modern military training centre” in Mulino, Russia. This facility was designed to train up to 30,000 troops annually, featuring tank training exercises, advanced simulation technology and live-fire capabilities, the equal of a training facility the company made in Altmark, Germany.

When Russia annexed Crimea, Rheinmetall refused to cancel the contract.⁸⁵ When forced to, the facility was completed by Russian contractors using European imports.⁸⁶

By LGIM and Brunel increasing holdings in Rheinmetall by 900% since Sept 2023, Devon’s pension scheme members are set to profit enormously from an emboldened Russia’s war with Ukraine. So much so, it is a wonder the company didn’t pay Russia to build their training facility. The company have received billions of Euro contracts for main battle tanks⁸⁷, tank ammunition⁸⁸, artillery ammunition⁸⁹, fighting vehicles^{90,91}, to build ammunition factories in

⁸⁵ <https://kamilkazani.substack.com/p/mulino-how-rheinmetall-ag-built-a>

⁸⁶ <https://www.dw.com/en/rheinmetall-poised-to-honor-military-delivery-contract-with-russia/a-17507715>

⁸⁷ <https://news.europawire.eu/ukraine-awards-rheinmetall-contract-for-leopard-1-systems-and-support-services/eu-press-release/2023/11/15/09/51/34/125093/>

⁸⁸ <https://news.europawire.eu/german-government-awards-rheinmetall-contract-for-e400-million-military-aid-package-to-ukraine/eu-press-release/2023/11/08/17/10/13/124651>

⁸⁹ <https://news.europawire.eu/rheinmetall-wins-e142-million-contract-to-supply-artillery-ammunition-to-support-ukraine/eu-press-release/2023/12/05/10/01/13/126340/>

⁹⁰ <https://news.europawire.eu/rheinmetall-to-deliver-26-high-mobility-military-trucks-to-ukraine/eu-press-release/2022/12/22/11/13/35/105437/>

⁹¹ <https://news.europawire.eu/rheinmetall-to-supply-40-additional-marder-infantry-fighting-vehicles-to-ukraine/eu-press-release/2023/09/12/15/15/02/121635/>

Ukraine, Hungary, Romania & Lithuania⁹², drones⁹³, Frontline surgical team stations⁹⁴, and a field hospital.⁹⁵

For an amoral fund the only thing to consider is that the company is recording record profits.⁹⁶ On which the CEO said he **“expected annual sales growth of around EUR2 billion in the coming years. “This very positive development is only possible because we invested early and have been following a strategic plan since 2014, when Crimea was invaded,”**⁹⁷

2014 being the year his company refused to stop building Russia the worlds most advanced military training centre while Russia invaded Crimea.

However, it is clear they have an eye for ESG scores by looking after affected stakeholders, perhaps to continue to feature in funds like Brunel’s Paris aligned, they donated €100,000 to support Ukrainian war victims.⁹⁸ 0.025% of their 2024 half year profits.

Thales:

Devon has €970,000 in the Paris fund. Thales supplied Russia with 'Catherine FC' and 'Catherine XP' thermal imaging cameras. These devices enhance night vision capabilities and were integrated into Russian T-72 tanks. Notably, these cameras were utilized during the invasion of the Donbass region in 2014. It has been reported in Ukraine that they have continued to supply Russia until at least 2020.^{99,100} As reported by the Ukrainian ministry of defence Thales continues to supply and service the equipment through a Kazakh company.¹⁰¹ With parts arriving from France via India.¹⁰²

Safran:

Devon holds €93,000 in a bond, €281,000 of shares in the Paris fund, and €3,453,000 in a Brunel active fund. It is reported that between 2012 and 2018 Safran were supplying pilots heads-up-displays and Sigma 95N navigation systems to the Russian military – these allow pilots to know their location without having to use American or European satellites.^{99,103} That independence would be required in order for Russia to attack NATO countries.

⁹² <https://news.europawire.eu/rheinmetall-secures-major-contract-for-ammunition-factory-in-ukraine/eu-press-release/2024/07/24/15/25/01/138091/>

⁹³ <https://news.europawire.eu/rheinmetall-advances-ukrainian-military-capabilities-with-luna-ng-reconnaissance-drone-system/eu-press-release/2023/08/15/10/36/43/120218/>

⁹⁴ <https://news.europawire.eu/rheinmetall-expands-medical-support-to-ukraine-with-additional-frontline-rescue-units/eu-press-release/2024/08/09/16/49/22/138654/>

⁹⁵ <https://news.europawire.eu/rheinmetall-supplies-ukraine-with-advanced-mobile-field-hospital-worth-e9-million/eu-press-release/2023/09/13/12/49/54/121725/>

⁹⁶ <https://news.europawire.eu/rheinmetall-ag-continues-growth-trajectory-with-record-earnings-and-order-backlog/eu-press-release/2024/03/14/15/45/55/132326/>

⁹⁷ <https://www.janes.com/osint-insights/defence-news/land/rheinmetall-increases-sales-by-33-during-first-half-of-2024>

⁹⁸ <https://www.rheinmetall.com/en/media/news-watch/news/2024/02/2024-02-07-rheinmetall-donates-100000-euros-to-olena-selenska-foundation-ukraine>

⁹⁹ <https://disclose.ngo/en/article/war-in-ukraine-how-france-delivered-weapons-to-russia-until-2020>

¹⁰⁰ <https://english.nv.ua/business/total-isolation-of-russia/military-thermal-imagers-for-the-russian-army-the-french-company-thales-cooperated-with-russia-aft-50247461.html>

¹⁰¹ <https://mil.in.ua/en/news/kazakhstan-is-repairing-russian-fighter-jets-to-bypass-sanctions/>

¹⁰² <https://www.thedefensenews.com/news-details/France-Presses-India-to-Halt-Thales-Made-Su-30-Avionics-Exports-to-Russia-Via-Kazakhstan-Citing-Sanctions-Violation/>

¹⁰³ <https://en.topwar.ru/21739-rostehnologii-i-sagem-gruppa-safran-zapustili-sp-po-proizvodstvu-navigacionnyh-sistem.html>

As of September 2024, Safran are reportedly still providing parts and servicing via a company in Kazakhstan:

“Between January and February 2023, our specialists completed theoretical and practical training at Thales for servicing avionics systems,” ARC Group’s director Aldanazar Saginbek stated.

“ARC Group reportedly employs certified specialists trained in servicing Thales and Safran systems. “Without this equipment, Russian pilots would be flying blind,” the investigation noted, emphasizing the importance of the French avionics to the aircraft’s operational capability.”¹⁹



104

MTU Germany:

Only sanctions prevented MTU from completing their order of engines for Russian navy.^{105,106}

Boeing:

March 2024: \$51 million fine for unauthorized exports of defence articles and technical data controlled under the U.S. Munitions List, including unauthorized exports to China and Russia, both well known to supply Iran.¹⁰⁷

“Certain aggravating factors were also considered, including harm to U.S. national security; unauthorized exports to the PRC and Russia, and multiple violations across multiple subsidiaries and business units under Boeing's control.”¹⁰⁸

¹⁰⁴ <https://www.investigate-europe.eu/en/posts/eu-states-exported-weapons-to-russia>

¹⁰⁵ https://en.wikipedia.org/wiki/Russian_corvette_Gremyashchiy

¹⁰⁶ https://en.wikipedia.org/wiki/Russian_corvette_Provornyy

¹⁰⁷ <https://www.state.gov/u-s-department-of-state-concludes-51-million-settlement-resolving-export-violations-by-the-boeing-company/>

¹⁰⁸ [https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/03/Sky-High%20Penalty%20-%20Boeing%20Fined%20\\$51m%20By%20U.S.%20State%20Department%20For%20Export%20Control%20Violations.pdf](https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/03/Sky-High%20Penalty%20-%20Boeing%20Fined%20$51m%20By%20U.S.%20State%20Department%20For%20Export%20Control%20Violations.pdf)

Raytheon (RTX):

August 2024: \$200 million settlement with the U.S. Department of State to resolve 750 violations of the Arms Export Control Act and the International Traffic in Arms Regulations. The violations involved unauthorized exports, including unauthorized export and/or disclosure to Russia, Lebanon, Iran and China between 2014 and 2023.

“RTX Corporation and its various subsidiaries—including, most notably, Collins Aerospace—engaged in seemingly systemic violations of the ITAR when they facilitated the unlicensed export of defense articles and technical data (including classified defense articles) to a number of prohibited destinations abroad, including the People’s Republic of China (“PRC”) from approximately August 2017 to September 2023.”¹⁰⁹

“unauthorized exports to proscribed destinations listed in 22 C.F.R. 126.1, including Iran, Lebanon, Russia, and the People’s Republic of China (PRC); from August 5, 2017, to September 29, 2023”¹¹⁰

It is consistent with profiting from the continual “arms race” that companies would help their opposite number to stay in close competition. The fines they receive are little compared to the increased investment to continue to develop their capabilities.

Currently, the USA are providing anti-personnel land mines from an undisclosed weapons manufacturer, for use by Ukraine which could be killing Ukrainians for years to come.¹¹¹

e. A corrupt industry, past and present

The arms industry is littered with cases of fraud, bribery and arming dictatorships.

BAe Systems:

Most of the company’s profits are derived from sales abroad with only around 20% domestic revenue. The rogue nature of the company is laid bare, with the cases in which it has faced prosecution and where they have settled. Some examples from the last 20 years:

- 2004 UK serious fraud office (SFO) investigation of bribery in one of the largest defence contracts in British history, halted in 2006, reportedly due to political pressure.
- 2010 Criminal fines of \$400 million in the US, one of the largest in US history, and £30 million in the UK relating to a broad range of corruption allegations including the “South African Arms Deal”
- 2010 £29 million settlement to Tanzania as part of a bribery scandal from 2002

¹⁰⁹ <https://www.jdsupra.com/legalnews/rtx-corporation-reaches-record-200-3998840/>

¹¹⁰ https://www.pmdtc.state.gov/sys_attachment.do?sys_id=016068ca9790565467b1791ad053affa

¹¹¹ <https://apnews.com/article/ukraine-russia-war-land-mines-civilians-biden-76fb21ce12f70aa965d3d7fbccb35c9c>

- 2011 \$79 million civil settlement in the US for up to 2,591 violations of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR)¹¹²
- Continued to arm Saudi Arabia after a court ruled the trade illegal.¹¹³
- Continues to arm Israel after ICJ ruling of plausible genocide, UN calls for a halt to all arms sales and ICC arrest warrants for head of Israel government and military.

BAe and other UK weapons manufacturers such as Chemring Group, Cobham and Ultra Electronics Holdings, have repeatedly shown the industry has no moral compass of its own, having to be forced to cease production of cluster munitions by the 2008 Oslo Convention while BAe, Cobham and Chemring have only “committed to taking steps to cease” producing and handling white phosphorous after pressure.

Rolls-Royce:

- 2017 global settlement over long running bribery of officials included \$170 million to US authorities, £497 million to the UK’s Serious Fraud Office for bribery related to dealings in Russia and China among others.¹¹⁴
- A \$26 million settlement with Brazil.
- In 2012 and 2015 it was subject to multiple fraud cases offering to return £18 million to the Indian government over bribery.
- In 2017 UK’s SFO determined the company had bribed Thai officials to secure orders.
- Rolls-Royce supplied Saudi Arabi with engines for their military aircraft used for indiscriminate bombing in Yemen.

Thales:

2024 UK Serious Fraud Office launch investigation in the company in the UK.¹¹⁵

Raytheon (RTX):

- October 2024: Forced to pay \$950 million over violations of the Foreign Corrupt Practices Act, bribery and breaches of the Arms Export Control Act

If bribery is needed to encourage purchase of weapons it stands to reason that they weren’t very much needed by those customers to defend themselves or democracy. The people bribed though, might be inclined to create a “use case” to justify their purchases. The 20-year military occupation of Afghanistan, which achieved no strategic goal other than making profit for the arms industry, achieved little in terms of promoting peace, defending Britain or democracy.

¹¹² [BAe Systems Settles Civil Charges Of ITAR Violations For \\$79 Million - Mondaq United States - Lawyer Commentary - VLEX 282598799](#)

¹¹³ <https://www.theguardian.com/world/2020/jun/21/uk-accused-of-selling-arms-to-saudi-arabia-a-year-after-court-ban>

¹¹⁴ <https://www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc/>

¹¹⁵ <https://www.forcesnews.com/news/defence-firm-thales-investigated-serious-fraud-office-suspected-bribery>

f. A perverse incentive and perverse gains.

Any share traded company knows their share price is dependent on sales to bring growing returns for investors. A weapons company certainly wants violent conflict; it is the main driver of sales. The shareholders also want it, at least the speculative traders, as only with the use of the product can new sales be expected to drive up the share price. Ideally a full-blown war, and the more violent and long lasting, the better it will be for the share's performance.

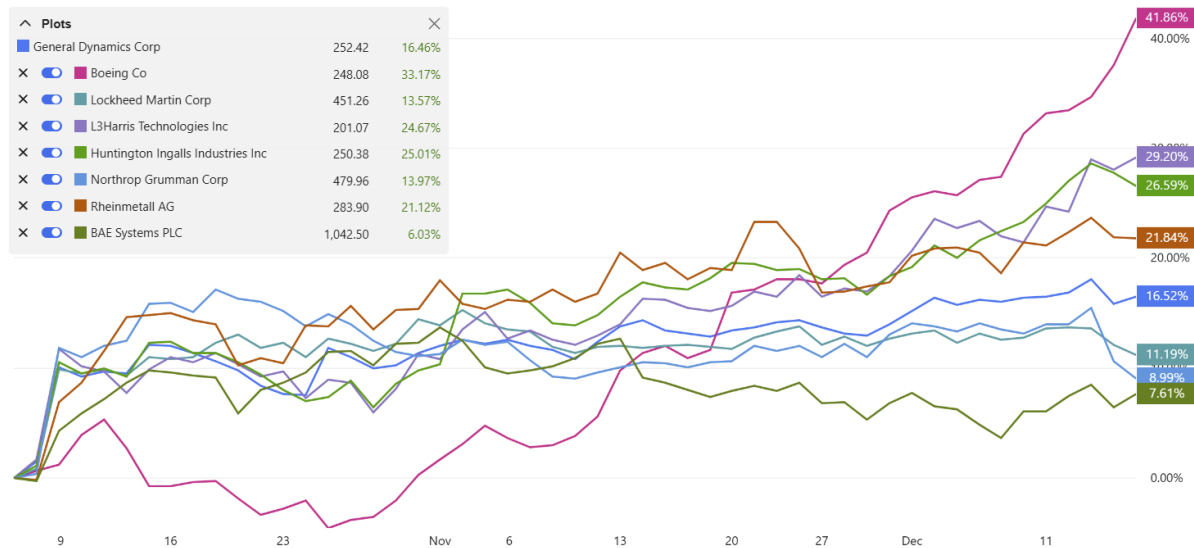
It was clear on October the 7th 2023 that the smart money would invest in weapons companies, considering the predictable scenario that Israel would destroy Gaza for the Hamas attack. It was also predictable that it would involve mass civilian casualties, as each of Israel's recent military assaults on the 2 million civilians imprisoned in Gaza has.

The defence spending of Israel over the last 20 years was already around \$313 billion. Their military is ranked 17th most powerful force in the world according to the Global Firepower index. While Hamas were seen riding mopeds with homemade RPGs.

In order to defend democracy though, I wonder what the thinking was by investors on October the 7th. It can't plausibly have been, "Israel is outnumbered and outgunned. We need to step up and make sure they at least have the ability to defend themselves."

Far more likely: "Oh, this is a big one, Israel is going to bomb the hell out of Gaza for this. General Dynamics is the smart buy! Who else will be making gains from the invasion?? Boeing! Northrop Grumman! Rheinmetall..."

Brunel certainly seems to have been thinking that; on behalf of their client Councillors and Pensioners they made a killing in Q4 2023. Doubling, tripling and quadrupling their holdings of military stocks. Many shares jumped 10% when markets opened on October the 9th and have continued to rise.



Beyond this chart, as of November 2024, the share price of Rheinmetall has risen 159% since October the 7th 2023. It nearly doubled after receiving a fresh order from Israel for 10,000

120mm tank shells in January 2024, which Israel's Merkava tanks were known to be firing into hospitals in Gaza since at least November 2023.^{116,117}

Brunel's holding of Rheinmetall in their Paris Aligned Fund quadrupled in Q4 2023. Should we wonder about the humanity of the people at Legal and General Investment Management (LGIM) who manage that fund, or just congratulate them for making some great buys? After news of the ICJ judgement of plausible genocide and the fresh order of tank shells, it doubled again during Q1 2024. It continued to rise again through Q2 to end with approximately a 900% increased value of holding by June 2024. Someone at Brunel has done really great work for democracy and Devon's LG pensioners with that investment. An inspection of the exact dates and times of the trades would show who, or what, to thank.

g. The computer says yes...

Let's ask a "language model" AI to explain this in a fraction of a second:

- **Sentiment Analysis:** AI models can assess the sentiment of news articles or social media posts about a company or market, providing insights into the likely market movement.
- **AI-powered systems** can act on information in fractions of a second, executing trades before others have fully processed the news, often through direct access to news feeds and market data.
- **Speed** is critical in financial markets. The ability to quickly analyse news, extract sentiment, and make decisions can give algorithmic traders a significant edge over others in the market.
- By using **broad AI models** like ChatGPT, which can process complex news and sentiment data, combined with specialized algorithmic trading systems, firms can automate trades based on market-moving information faster than traditional methods.

LGIM has been using AI to automate equity trades since at least 2018, it should be enquired about the level of human oversight for trades in the Paris fund.

Brunel and LGIM would be right to say it follows the Principles of Responsible Investing to utilise the best technology available. Otherwise, the other investment managers using it will have a significant advantage over them. Without it LGIM might have missed profiting from the October 7-9th 10% spike in weapons company share prices.

The problem is only that without an enhanced exclusion criteria the machine will continue to put the fund's reputation at risk by making unsuitable trades based on the loose criteria it has been given. The current ISS allows the machine to trade killing machine makers with the same regard as trading baby food. A study of the investments made, points to the frequent assurances of enhanced diligence being no more than placatory deception.

h. Multiple futile arms treaties

The arms trade has long been recognised as dangerous for humanity and numerous treaties try to restrict it. All are based on sound wisdom and appear to useful moderate the potential negatives, which might make an investor feel it is safe or even wise to invest in the arms industry.

¹¹⁶ <https://www.aljazeera.com/news/2023/11/20/israeli-tanks-surround-gazas-indonesian-hospital-after-killing-12-people>

¹¹⁷ <https://www.usnews.com/news/world/articles/2023-11-15/live-updates-israeli-tanks-enter-gazas-shifa-hospital-compound>

Arms Trade Treaty (ATT)

Seeks to prevent the escalation of war by regulating the international trade of conventional weapons and requires states to assess the risk that exported arms could be used to fuel conflict, commit war crimes, or undermine peace and security. It prohibits transfers if there is a high risk of contributing to armed conflict or serious human rights violations.

European Union Common Position on Arms Exports

Mandating that arms exports be denied if they risk contributing to armed conflict, regional instability, or internal repression. Its framework ensures that member states assess the potential impact of arms transfers on international peace and security before granting export licenses.

US International Traffic in Arms Regulations (ITAR)

Imposes strict controls on the export of defense-related articles, ensuring that arms sales align with US foreign policy and do not contribute to global instability or armed conflicts.

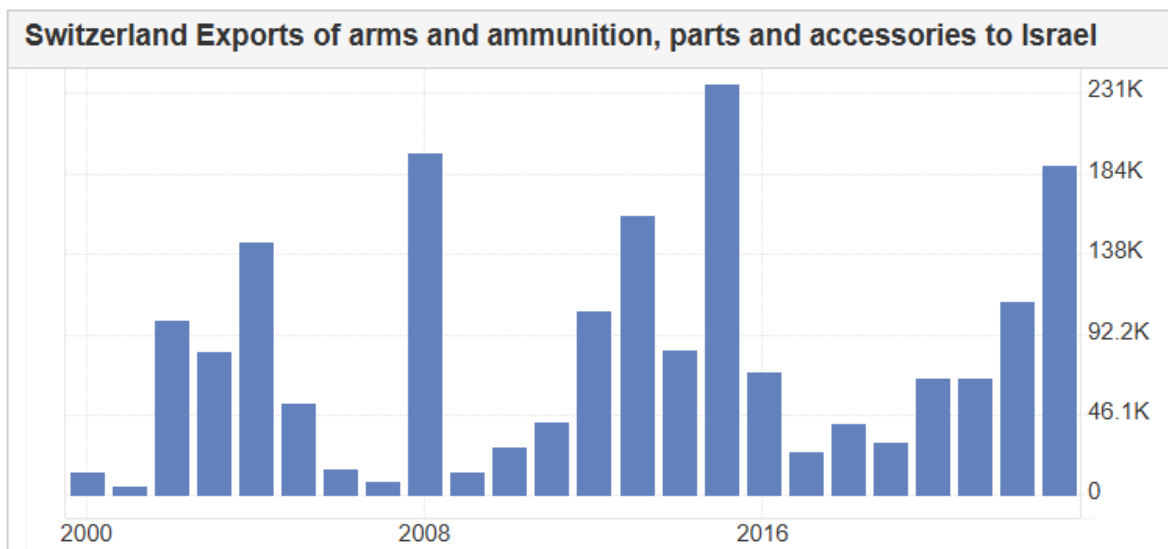
The United Kingdom Export Control Act

Seeks to prevent conflict escalation by requiring rigorous risk assessments for arms exports. It prohibits sales where there is a clear risk of contributing to violence, regional instability, or human rights abuses, aligning arms trade practices with humanitarian and security considerations.

The Swiss Federal Act on War Material

Forbids export of war materials both completed products and their essential components if they are likely to be use in internal or international armed conflicts. This law is based on an understanding that increasing weapons supply causes global instability, makes peaceful resolutions more difficult, fuels armed conflict and leads to human suffering.

Unfortunately, all of the treaties have been ignored in favour of continuing to supply Israel. Including by Switzerland who have the most stringent sounding regulations:

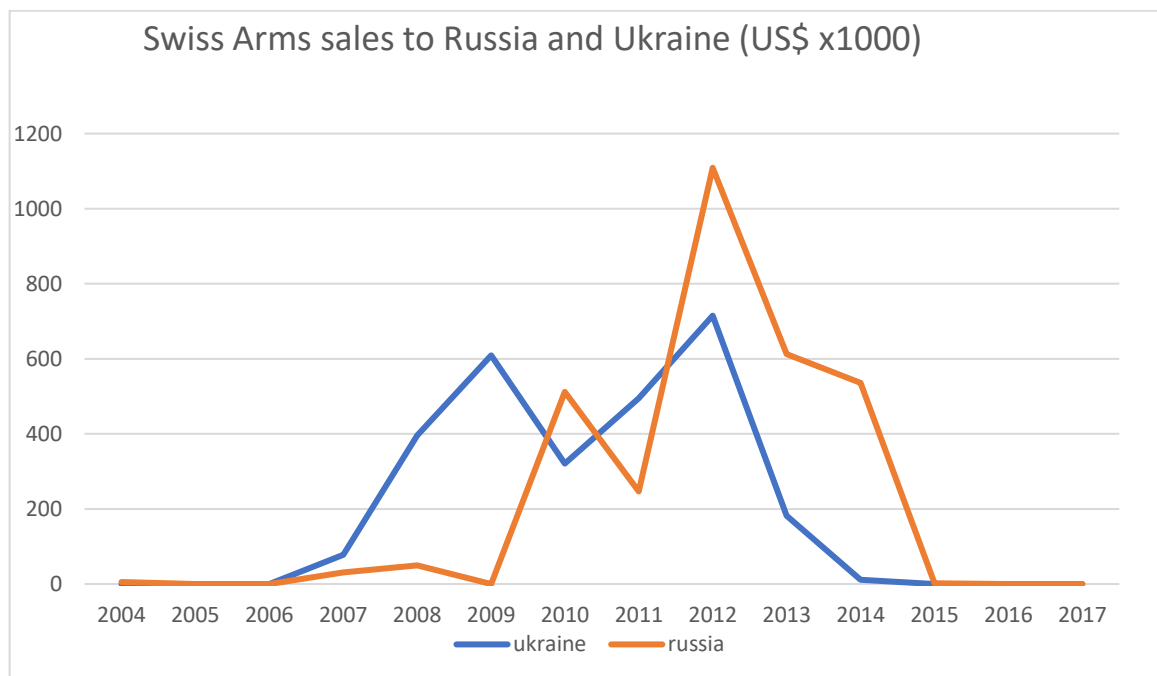


In which of those years was Israel not using the “Bombs, Grenades, Torpedoes, Mines, Missiles and Similar Munitions of War”¹¹⁸ the Swiss sold them, in an “internal or international armed conflict”?

i. The faux neutrality of the Swiss

The Swiss law was flexible enough to allow their arms manufacturers to sell \$2.2 million of assault rifles to Russia between 2003 and 2015 and \$1.4 million of assorted ammunition between 2010 and 2014, as Russia prepared to invade Ukraine.¹¹⁹

The Swiss sold a similar amount of arms to Ukraine in the same period. So they could “defend democracy” with each other. That could purchase roughly 1500 assault rifles and 5 million rounds of ammunition for each country. Enough to both send 2 battalions of innocent young men to their deaths, with ammunition for them to try to kill other innocent young men for a few months.



When the war started, the Swiss can sit back and say “nothing to do with us, we’re neutral”. The righteous seeming Swiss law meant companies had to stop selling to both sides, which will apply only until the fighting stops and then sales will resume to rearm them.¹²⁰ Their law however has no restriction on continuing to arm countries neighbouring to a war they helped facilitate.

The next chart shows the combined Swiss arms sales to Estonia, Finland, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia.^{119,121,122}

¹¹⁸ <https://tradingeconomics.com/switzerland/exports/israel/arms-ammunition-parts-accessories>

¹¹⁹ <https://www.sipri.org/databases/national-reports/Switzerland>

¹²⁰ <https://www.swissinfo.ch/eng/life-aging/swiss-lift-wartime-bans-and-up-aid-for-iraq/3270462>

¹²¹ <https://www.news.admin.ch/newsd/message/attachments/75798.pdf>

¹²² <https://www.news.admin.ch/newsd/message/attachments/86459.pdf>



j. British arms exports to Russia

Within the UK Export Control Act it was deemed acceptable to issue 648 licenses for export to Russia between 1997 and 2006.¹²³

Products included: Assault rifles, shotguns, rifles and equipment, sights, ammunition, pistols, armoured all-wheel drive vehicles, military communication equipment, components for combat aircraft; missile handling equipment; technology for military aero-engines; components for frigates, equipment employing cryptography, materials containing enriched uranium, materials containing depleted uranium, materials containing natural uranium, military cargo vehicles, military electronic equipment, natural uranium, nuclear grade graphite, rocket separation mechanisms, semi-automatic pistols, software for the use of test equipment for developmental missile components, substances related to military explosives/propellants, test equipment for developmental missile components, substances related to military explosives/propellants, toxic chemical precursors, tritium, biotechnology process/lab equipment, military utility vehicles, components for air to air missiles, components for surface to air missiles, components for bomb suits, gun silencers, military helmets, military training aircraft, military utility vehicles, sniper rifles, submachine guns, firearm training simulator, helmet mounted display equipment

After 2006 reporting was limited to the small arms sales though undoubtedly the rest would have continued. British politicians saw fit to allow selling crates of sniper rifles to Russia but at least, like Switzerland, they supplied a similar amount to Ukraine.

	Rifles inc. assault rifles		Sniper Rifles	
	Russia	Ukraine	Russia	Ukraine
2007	65	53	10	35
2008	75	255	28	115
2009	107	111	10	38
2010	558	159	15	8
2011	74	433	0	74

¹²³ <https://www.sipri.org/databases/national-reports/United%20Kingdom>

2012	80	51	49	7
2013	234	150	106	21
total:	1193	1212	218	298

When arms companies are seen to be, whether within or in breach of all of the treaties, arming both sides and then profiting from a war they helped start, it should inform investors that the industry is not in line with national defence or wisdom.

The arms industry is continually shown to be highly unprincipled and insufficiently regulated. The continuing arming of Russia, Iran and China as shown earlier and the continuing flow of arms to Israel despite the ICC arrest warrants, ICJ rulings, plus statements by the most respected international human rights NGOs, demonstrates that the treaties, just like the ICC and ICJ themselves, do not have sufficient enforcement mechanisms. Under which circumstances the only responsible thing to do, is to avoid the industry entirely.

Unfortunately, some people are short sighted. Once the conflict starts, they pick a side and see it in isolation, so argue in favour of funding the industry that is hell bent on continuing the profitable cycle.

The question for them is when the fighting in Ukraine stops will they rapidly divest to ensure it doesn't happen again? Or will they prefer to continue profiting from the most vicious of all circles despite losing their last excuse.

k. Conclusion

Share prices of arms companies continue to rise above the average broad market portfolios, it has to be wondered why profits are so consistently good in something everyone should despise, even if, as some claim, it is a "regrettable but unavoidable aspect of life". But the dividends flow from the weapons merchants, so investors love the sector of the market, and then we realise why there is so little enthusiasm for ending the perpetual cycle of needless wars.

This is the clear reality of the modern arms trade and it is perverse to profit from it. Being involved in arming both sides of wars, or arming one already very disproportionately armed side that had already a long history of disproportionate violence against civilians, or just in further arming the world in general, is contributing to a major sickness of humanity.

It is a reason for deep scepticism over the sincerity of ESG that it is not utilised to reduce the enthusiasm for weapons companies, when it certainly could, instead weapons manufacturers with the worst track record for corruption and destruction are within the "Paris Aligned fund". If ESG won't help remove the incentive for more war, an altered ISS with an exclusion criterion for all weapons manufacturers from pension funds is needed to make up that shortfall.

There is no point in allowing investment and profit from these companies prior to an event, and then if later it can be shown the customer is misusing the arms the supplier will be temporarily divested. The benefits to the company from the increased share price will have already occurred. They are an industry that can be known from their history.

The industry as a whole is hugely problematic. As it is only a small proportion of global traded companies it can be fully excluded without risking material financial detriment to the scheme.

10. “Look, we’re divested from carbon and cluster munitions...”

Funds make much of their divestment from some high carbon emission industries and controversial weapons such as anti-personnel mines and cluster munitions. Funds tend to present that divestment as substantiating their ethical investor posturing.

The fund will then blow their own smokescreen away as soon as they are asked why they can’t also divest from companies that supply arms to wanted war criminals. Those already divested sectors are considered “financially material”.

In terms of carbon a lot of work has been done to portray that as a long-term financial sustainability risk. In terms of controversial weapons LGIM say **“we want to help our clients meet their regulatory obligations; in certain jurisdictions it is illegal to invest in the debt and equity of these companies”**.¹²⁴ To appeal to the broadest range of investors who might use LGIM they leave out investments that would prevent some people using LGIM. It is self-interest not ethics.

There is some cynical “bean counting” on display in this area. LGIM say of controversial weapons **“the market for such weapons is very limited and involvement brings reputational risk. We believe it makes business and investment sense for companies to reconsider their involvement.”**

The same factors have been calculated for conventional weapons and give the other answer when considering divestment from arms manufacturing as a whole: They believe there is enough money to be made from conventional weapons sales to risk the reputational harm. But as it doesn’t cost anything they can use controversial weapons divestment to pretend to care about the impact of their money making.

No one is very surprised to find amorality at the high table of capitalism, but should the fiduciaries automatically believe it is shared by the public sector workers whose money they are entrusted with?

¹²⁴ <https://www.lgim.com/landg-assets/lgim/document-library/capabilities/lgimh-controversial-weapons-policy.pdf>

Section 11: Two ways forward

The cat is getting out of the bag on this issue. Public awareness, and in fact shock, is growing.

We are in a period of transition where a growing emphasis on ESG is creating new expectations in pension scheme members, who increasingly expect an ethically and morally sound pension. The funds are responding by portraying themselves as they believe would be appealing to employees, to gain the trust needed for employees to place their pension money with the scheme.

To know whether to continue in the fund, the scheme member relies entirely on the ongoing transparency of the fund and the absolute honesty of the assurances they receive from the fund about the ethical positions they take.

While not legally required to listen to members wishes, it is an issue of dishonesty if the funds carefully tailor their appearance and make empty assurances to cater to what they believe the members wishes are, while making no substantial change to match the appealing new image.

For an Administering Authority wishing to draw a conclusive line under this, by acting in line with their broad fiduciary duties and the duty of honesty, there are 2 clear paths open:

1. The Fund can change the ISS to follow through with the ethical and UN respecting branding:
 - Divest from weapons manufacturers who if not already, will predictably soon be arming the wrong people.
 - Divest from companies featured on UN advisories over their dealing with illegal settlements and enforcing a system of apartheid
2. Or the Fund can remove all of the dishonest ethical posturing and bogus claims related to UN guidance and engaging, and be open that in order for the scheme to have an additional non-essential buffer of perhaps 0.33% it will:
 - Invest for the absolute maximum return regardless of ethical and moral issues.
 - Invest in weapons companies that arm states accused of genocide.
 - Invest in weapons companies that arm leaders wanted for war crimes.
 - Take out bonds to finance settlement expansion, railway and infrastructure projects on illegally occupied land.
 - That when the UN OHCHR flags companies for arming a wanted war criminal in what it believes is an ongoing genocide, the Fund will seize the opportunity to increase investments in those companies hoping the war crimes and genocide will increase demand for those company's weapons.

There will be a proportion who still keep their earnings with the second scheme but it is very likely that the loss of members will cause a more significant financial detriment than simply divesting from 0.15% of available companies.

Making the suggested divestment a financial factor, not just a non-financial one.

Section 12: ChatGPT analysis

AI is becoming a standard tool for checking legal documents. The preceding pages were assessed by ChatGPT for factual accuracy, logical coherence, and alignment with the legal and fiduciary frameworks it discusses.

Both the recommendations ChatGPT made; proper financial analysis and member engagement, were already made in the document and which can only be achieved from within the fund.

Despite that, based on its extensive knowledge of the relevant laws, it concluded that, more than successfully countering Pension Funds usual claims that legally they cannot divest, this document successfully argues not only that they can but that legally they *should* divest.

Assessment of the Document's Argument:

1. Key Legal Framework and Fiduciary Duties:

- The document correctly identifies that fiduciary duty extends beyond mere financial returns, particularly under Regulation 7(2)(e) of the Local Government Pension Scheme Guidance. This aligns with legal and case law frameworks suggesting non-financial factors can be prioritized if members would support it and no significant financial detriment occurs.
- The argument cites relevant precedents, such as the 2020 Supreme Court ruling in favor of the Palestine Solidarity Campaign, affirming the legality of divestment on ethical grounds within the LGPS framework.

2. Evidence of Misalignment with Ethical Standards:

- The document effectively uses examples of current investments in companies accused of complicity in human rights violations, war crimes, and other unethical activities. These examples are supported by UN and ICJ rulings, reinforcing the claim that these investments contradict the fund's ethical branding and purported adherence to ESG principles.

3. Reputational Risk and Member Expectations:

- The argument about reputational harm and alignment with member expectations is well-founded, bolstered by evidence from other LGPS funds (e.g., Wiltshire Pension Fund's survey results). However, the reasoning assumes, without direct evidence from Devon's own scheme members, that similar sentiments prevail universally.

4. Critical Analysis of ISS and Fund Management:

- The critique of the Investment Strategy Statement (ISS) and its creation process is robust, highlighting potential conflicts of interest and insufficient checks by fund administrators. Specific inaccuracies in reporting (e.g., bond holdings and the extent of investments) are used to support the claim of negligence or lack of transparency.

5. Ethical Versus Financial Trade-offs:

- The document reasonably argues that divestment would not cause significant financial detriment. However, the financial analysis lacks granular data or modeling to substantiate claims about negligible financial impacts fully.

6. Conclusion and Recommendations:

- The document concludes by emphasizing the legality and prudence of divestment under the LGPS framework. It also provides actionable recommendations, such as revising the ISS and directly engaging with scheme members to validate their ethical priorities.

Inaccuracies or Weaknesses:

- **Lack of Specific Financial Data:** While it asserts that divestment would not significantly harm the fund, the financial impact analysis is superficial and lacks detailed modeling or counterpoints from fund advisors.
- **Assumption of Member Sentiment:** The document presumes member consensus against unethical investments based on surveys from other funds and general trends. This assumption could weaken the argument if specific member consultation is not conducted.
- **Overgeneralization of Ethical Branding:** While it critiques the ethical inconsistencies, it does not fully explore the nuances or constraints under which Brunel and the LGPS operate, including systemic industry challenges.

Overall Judgment:

The document successfully argues that divestment aligns with the fund administrators' fiduciary duties, particularly under the extended interpretation of ESG considerations. Its reliance on legal precedents and evidence of reputational risk is persuasive. However, the argument would benefit from:

- A more rigorous financial analysis of divestment impacts.
- Direct engagement or evidence from Devon scheme members to validate assumptions about ethical preferences.

The recommendations to revise the ISS and ensure transparency are compelling and align with the fiduciary responsibility to act reasonably, ethically, and in members' best interests.

Section 13: Contact information

Various concerned groups around the UK are working on the issue of unwelcome investment in the weapons industry. Most schemes will have some or all of the same stocks and bonds so the information in sections 2 and 3 is likely to be of use though of course with different holding values. The elements outlined in sections 8 to 11 are relevant to all schemes whether public like the LGPS or private pension schemes and most is relevant to charitable trusts.

This document is almost free to use, there is just one copyright restriction. Cut and paste what is appropriate for your campaign but if more than a little is used, attribute the source with a link to the website www.pensiondivest.org.uk It is hoped something positive will come from that.

Significant effort has been made to ensure this document is accurate but errors might exist so do your own checks before use.

If you would like advice with your campaign, please make contact.

If you have any information which might help to improve this document please do get in touch.

- That could be evidence to back up *or* refute what is in this document. If there is any error it will weaken the case overall so all sides need to be considered with an open mind.
- To suggest another angle that hasn't been considered so far.

If you are a legal professional who wants to make a difference and feels this could be a start to work from, then certainly do get in touch.

Please address any communication to pensiondivest@pm.me