



Clr Roger Phillips
Chair, The Local Government Pensions Scheme Advisory Board
c/o The Pensions Team, Local Government Association
18 Smith Square, London SW1P 3HZ

By email: Jeff Houston, Head of Pensions jeff.houston@local.gov.uk
Cc Joanne Donnelly, Senior Pensions Secretary joanne.donnelly@local.gov.uk

28 February 2022

Dear Councillor Phillips

Meetings and correspondence with Mr Michael Lynk

UK Lawyers for Israel (UKLFI) is an association of lawyers who seek to ensure the correct understanding and observance of laws in matters relating to Israel.

The [letter of 22 November 2021](#) sent by Mr Michael Lynk to Local Government Pension Schemes has come to our attention. We note that the Secretary of the Local Government Pension Scheme Advisory Board (LGPSAB), together with the Chair and other representatives of the Local Authority Pension Fund Forum (LAPFF) held a call with Mr Lynk on 11 January 2022. We understand from the post on the LGPSAB website that it was agreed to hold a follow-up call and that Mr Lynk would provide further information about the UNHRC database referred to in his letter, but we do not know whether either of these have happened.

We consider that Mr Lynk's intervention was illegal and outside the scope of his mandate as a Rapporteur of the UN Human Rights Council (UNHRC). Furthermore his letter contains serious misrepresentations and it seems likely that he made additional misrepresentations in the call on 11 January 2022 and in any further discussions or correspondence. In these circumstances, any investment decision influenced by Mr Lynk's intervention, supposedly in his capacity as a Rapporteur of the UNHRC, will be challengeable on the basis of error of law, taking into account irrelevant considerations, failure to act with due skill, care and diligence, and breach of fiduciary duties.

Please confirm that the LGPSAB will not engage further with Mr Lynk except in his capacity as a private Canadian citizen; and that, if you do engage with him in that capacity, you will take into account the unreliability of his allegations as demonstrated in this letter

UK Lawyers for Israel, 30 City Road, London, EC1Y 2AB
Email: info@uklfi.com Website: www.uklfi.com

Patrons: Lord Carlile CBE QC, Lady Cosgrove CBE QC, Baroness Deech DBE QC, Lord Dyson PC, Sir Bernard Eder, Lord Grabiner QC, Stephen Hockman QC, Lord Howard CH PC QC, Sir Ivan Lawrence QC, Lord Pannick QC, Professor Richard Susskind OBE, Lord Trimble PC, Rosalind Wright CB QC, Lord Young CH PC DL

and the documents to which we refer below. Please also provide us with full details of the discussion with Mr Lynk on 11 January 2022 and any further discussions or correspondence with him, including any recordings, transcripts or notes, so that we can endeavour to correct misinformation and avert unlawful decisions influenced by it.

Bearing in mind the functions of the LGSPAB to provide advice to the Secretary of State, administering authorities and local pension boards, both reactively and proactively, we expect you to communicate the points made in this letter to them, particularly as they are likely to have been misinformed by any communications you have made to them in reliance upon correspondence from and discussions with Mr Lynk. Please confirm that you have done this.

We expect a substantive response to this letter within 14 days.

We are of course aware that the general issue may be addressed soon by legislation and guidance or directions by the responsible authority. Nevertheless, we think it is still important to mitigate any improper influence that Mr Lynk's letter may have had on Local Government Pension Schemes.

We are writing similarly to the LAPFF.

Scope of Mr Lynk's mandate

Mr Lynk claimed in his letter that he was writing in his "*capacity as the United Nations Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967.*" This is incorrect. The mandate was established by Resolution 1993/2 of the UN Commission on Human Rights in the following terms:

"(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;

*(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories"*¹

The UN Commission on Human Rights was subsequently replaced by the UN Human Rights Council (UNHRC), but the mandate continued unchanged.

This mandate plainly does not include reporting to local authorities or local government pension funds in individual States. Nor does it include working with governments, civil society and others to foster international cooperation (as claimed by Mr Lynk), still less making polemical interventions in the administration of pension funds. It is also limited

¹ [E/CN.4/RES/1993/2](#), Art. 4. The mandate is also stated in these terms on the UNHRC's [website](#).

to (supposed) violations by the State of Israel and does not extend to alleged violations by businesses or by Palestinian authorities.

Illegality of Mr Lynk's mandate and appointment and conduct

Moreover, we consider that the mandate, appointment and conduct of Mr Lynk are unlawful and invalid. Taken together with other grossly discriminatory treatment of Israel on the part of the UNHRC, they breach the principles of equal rights of peoples and sovereign equality of UN members enshrined in articles 1 and 2 of the UN Charter. They also breach UN General Assembly (UNGA) Resolution 60/251,² which established the UNHRC; UNHRC Resolution 5/1,³ which laid down its basic procedural rules; and UNHRC Resolution 5/2, which adopted a Code of Conduct for Special Rapporteurs.⁴

Article 1 of the UN Charter states that *“The purposes of the United Nations are: ... 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ...”* Article 2 states: *“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles. 1. The Organization is based on the principle of the sovereign equality of all its Members.”*

UNGA Resolution 60/251 requires the UNHRC to promote universal respect for the protection of human rights and fundamental freedoms in a fair and equal manner; to be guided by principles of impartiality, objectivity and non-selectivity; and to have methods of work that are transparent, fair and impartial.

This mandate is plainly not fair since it presumes and refers to violations on only one side. Its conduct by Mr Lynk and his predecessors, such as Richard Falk (who endorsed 9 11 conspiracy theories),⁵ has been anything but fair, impartial, objective and non-selective.⁶

Paragraph 39 of the Annex to UNHRC Resolution 5/1, which that Resolution adopted, states: *“The following general criteria will be of paramount importance while nominating, selecting and appointing mandate-holders: (a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.”*

Mr Lynk's politicised appointment, resulting from the automatic majority enjoyed by the members of the Organisation of Islamic Cooperation and their developing country allies, did not comply with these criteria. He is lacking in relevant expertise and experience, independence, impartiality, integrity and objectivity. As the organisation NGO Monitor has pointed out, he *“is unfit to fulfil his mandate due to:*

² https://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf particularly Arts. 2, 4, 12

³ A/HRC/RES/5/1 https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/res/5/1

⁴ <https://www.ohchr.org/Documents/HRBodies/SP/CodeOfConduct.pdf>

⁵ <https://unwatch.org/falks-departure-victory-palestinians-human-rights/>

⁶ <https://www.ngo-monitor.org/reports/special-rapporteur-human-rights-palestinian-territory/> and the enclosed Memorandum of Anne Herzberg on behalf of the Institute for NGO Research (NGO Monitor) of 17 February 2022.

- *Partnerships with organizations that have alleged ties to terror groups and that promote BDS (boycott, divestment, and sanctions) campaigns against Israel.*
- *Self-admitted lack of expertise in international law.*
- *Moral failures, as shown in labeling a virulent antisemite as a “human rights defender” in his March 2017 report to the UN Human Rights Council.”⁷*

Further critical comments about Mr Lynk and the mandate given to him by the UNHRC have been made by the organisation UNWatch⁸ and in the attached Memorandum of Anne Herzberg on behalf of the Institute for NGO Research of 17 February 2022. His lack of expertise was also displayed in his comments regarding responsibility for the vaccination of Palestinians.⁹

The Code of Conduct adopted in UNHRC Resolution 5/2 requires a Special Rapporteur, inter alia

- to act in an independent capacity;
- to keep in mind the mandate of the UNHRC to promote universal respect for the protection of human rights and fundamental freedoms through dialogue and cooperation;
- to exercise his functions in accordance with his mandate and to ensure that his recommendations do not exceed the mandate or the mandate of the UNHRC;
- to focus exclusively on the implementation of his mandate, constantly keeping in mind the fundamental obligations of truthfulness and independence;
- to uphold the highest standards of competence and integrity, including probity, impartiality, equity, honesty and good faith;
- not to seek or accept instructions from any NGO or pressure group;
- to behave in a way that maintains and reinforces the trust of all stakeholders;
- to always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources, that he has duly cross-checked to the best extent possible, and to base conclusions and recommendations on objective assessments of human rights situations;
- to be guided by the principles of impartiality and even-handedness;
- to rely on objective and dependable facts based on evidentiary standards appropriate to the non-judicial character of his reports and conclusions;
- to show restraint, moderation and discretion so as not to undermine recognition of the independent nature of his mandate or the environment necessary to properly discharge the mandate
- to give representatives of the concerned State the opportunity of commenting on his assessment and responding to his allegations and annex the State’s written summary responses;
- when expressing his considered views, to indicate fairly what responses were given by the concerned State
- ensure that the concerned government authorities are the first recipients of his conclusions and recommendations concerning the State

⁷ <https://www.ngo-monitor.org/reports/special-rapporteur-human-rights-palestinian-territory/>.

⁸ <https://unwatch.org/lynk/>

⁹ <https://www.uklfi.com/un-human-rights-commissioners-office-is-wrong-on-israels-obligations>

It appears to us that all of these requirements have been breached by Mr Lynk in his conduct of the mandate. We refer to the points made in the analyses cited above. In addition, as regards the last three requirements set out above, we have been informed that Mr Lynk did not transmit a copy of his letter of 22 November 2021 to the Israeli government for their comment before sending it to Chairs of Local Government Pension Schemes. This was a serious deficiency since it prevented and, we believe, was intended to prevent any correction of the misrepresentations in it before it was read and relied upon.

In view of the points made above, the LAPFF and LGPSAB should not have regarded the content of Mr Lynk's letter as having any official authority. They should have treated it as the comments of a private and prejudiced foreign citizen.

We now turn to address some of the misrepresentations in Mr Lynk's letter.

The supposed "settlement economy"

Mr Lynk claims in his letter that Israeli settlements in the West Bank "*are sustained, in significant part, by international and Israeli corporations who are heavily invested in the thriving settlement economy*". He cited no evidence to support this claim and we do not believe that it reflects the reality, which is that there is no separate "settlement economy". As indicated by the repeated references to the supposed "settlement economy", the views expressed in his letter appear to be premised on this false assumption.

Some Israeli residents of the West Bank work in businesses or other occupations in the West Bank, but many work in Israel within the "Green Line". There are businesses operating in the vicinity of Israeli communities in the West Bank, mostly on trading estates outside residential areas. These employ Israelis and Palestinians who live in the West Bank and also Israelis who live within the Green Line. They are part of the Israeli economy and, in many cases, also part of the Palestinian economy. Israeli communities in the West Bank are not "sustained" by these businesses and nor are these businesses "heavily invested" in a separate settlement economy.

Mr Lynk also claims that "*Israel has created close to 300 settlements*". It is not clear where he got this figure from, but nearly half of these are probably "outposts" that were not created and have not been authorised by the State of Israel.¹⁰ Moreover, a significant number of settlements that have now been authorised in the West Bank were not originally created by the State of Israel. Some other Israeli settlements in the West Bank were originally created under the British mandate but were destroyed in 1948 and re-established after 1967.

Alleged illegality

Mr Lynk claims in his letter that "*the illegality of the Israeli settlements is one of the most settled issues in modern international law*". However, firstly the issue is not as settled as he pretends. The last US administration concluded that "*the establishment of Israeli*

¹⁰ See the figures cited by the Israeli NGOs, [Peace Now](#) and [B'Tselem](#) (which oppose settlement of Israelis in the West Bank);

civilian settlements in the West Bank is not per se inconsistent with international law".¹¹ Various earlier US administrations also held this view. The current US administration has said that it opposes the expansion of Israeli settlements in the West Bank but has not retracted the previous administration's view of their legality. Some academic writers have also argued cogently that Israeli settlement in East Jerusalem, Judea and Samaria (the West Bank) is in principle legal.¹²

The UN Resolutions and NGO views cited by Mr Lynk are not legally binding. The same applies to the Advisory Opinion of the International Court of Justice, which was also based on inaccurate information.¹³ Under the Oslo Accords, the status of the Israeli settlements in the West Bank is a matter to be resolved in final status negotiations between the parties¹⁴ and the agreements include provisions relating to settlements and businesses in them until their final status is resolved.¹⁵

Secondly, even if Israeli settlement in the West Bank is illegal under international law, it is important to clarify what is illegal. Art. 49(6) of the 4th Geneva Convention and Art. 8(2)(b)(viii) of the Rome Statute of the International Criminal Court prohibit the transfer by a State of parts of its own civilian population into the territory it occupies. Neither provision expresses any restriction on the operation of a business in or in the vicinity of an area to which population has been transferred. Nor do they prohibit movement of population unless it is a transfer of population by an occupying State.

The term "illegal settlement" is frequently used as an abbreviated way of asserting that the establishment of the settlement involved a prohibited transfer of population by the State. However, it is fallacious to assume from the use of this abbreviation that the operation of a business in or in the vicinity of a settlement must be illegal. As the UK Supreme Court observed in *Richardson v DPP*,¹⁶ a business would only infringe the prohibition if it counselled, procured, aided or abetted an unlawful transfer of population; taking advantage of a transfer of population would not infringe. Indeed, many major companies operate in occupied territories around the world¹⁷ and States have accepted

¹¹ <https://il.usembassy.gov/secretary-pompeo-comments-on-israeli-civilian-settlement-activity/>;
<https://www.timesofisrael.com/full-text-of-pompeos-statement-on-settlements/>

¹² Eg Eugene Rostow, *Note*, AJIL (1990) 717; Eugene Rostow, "*Palestinian Self-Determination*": *Possible Futures for the Unallocated Territories of the Palestine Mandate*, Yale Journal of International Law, Vol 5 (1979), 147 at 154-162; Eugene Kontorovich, *Unsettled: A Global Study of Settlements in Occupied Territories*, Journal of Legal Analysis, Vol 9, Issue 2 (2017), 285–350

¹³ M. J. Kelly, *Critical Analysis of the International Court of Justice Ruling on Israel's Security Barrier* 29 Fordham International Law Journal (2005) 181 at 183-187; HCJ 7957 *Mara'abe & ors v The Prime Minister of Israel & ors* (the *Alfei Menashe* case) 21/6/2005 §§57-74; Israel Ministry of Foreign Affairs, *Unofficial Summary of State of Israel's Response regarding the Security Fence*, 28/2/2005

¹⁴ *Oslo II Accord*, Art. XXXI.5

¹⁵ eg *Oslo II Accord*, Art. XII.1; Annex III, Arts. 10.5, 11, 15.2, 15.5, 27.3, 36A.2b, 36D.3a, 36D.4a, 38.9a, 38.10b, 38.11b, 38.18b; Annex V, App. 1, Art. V.4b

¹⁶ [2014] UKSC 8 at §17. Similarly the [decision](#) of the Cour d'Appel de Versailles in *AFPS and PLO v Alstom and Veolia* RG No 11/05331, 22/3/2013.

¹⁷ Kohelet Policy Forum, *Who Else Profits* (2017) https://euiha41fnsb2lyeld3vkc37i-wpengine.netdna-ssl.com/wp-content/uploads/2017/06/WhoElseProfits_most-final-19.6.pdf and *Who Else Profits, Second Report* (2018) <https://euiha41fnsb2lyeld3vkc37i-wpengine.netdna-ssl.com/wp-content/uploads/2018/11/WhoElseProfits-e-version.pdf>

and endorsed this practice.¹⁸

Israeli Settlements, Businesses and Human Rights

Mr Lynk relies on biased reports of the UNHRC to assert that Israeli settlements in the West Bank are a “*significant source*” of human rights violations against Palestinians. It is not practicable to address these allegations fully in this letter, but we will make some brief points.

Mr Lynk claims there is “*labour exploitation*”. This is the opposite of the true position. Around 30,000 Palestinians are employed by businesses in or in the vicinity of Israeli communities in the West Bank and East Jerusalem, at average salaries that are more than three times average salaries at Palestinian businesses, and with benefits such as health insurance and pension contributions that are not usually provided by Palestinian employers.¹⁹ Taking into account the families of these workers as well as other Palestinians who provide goods and services to them, this employment provides the livelihoods of probably hundreds of thousands of Palestinians. Palestinians also benefit from goods and services provided by these businesses.²⁰ In addition, productive employment of Palestinians working together with Israelis contributes to reducing conflict and promoting peace and reconciliation.²¹

More generally, Israeli administration in the West Bank has achieved an enormous improvement in the standard of living, health, education and welfare of Palestinians in this area. Conditions in the West Bank were dire prior to 1967. The improvement was particularly marked when Israel administered the whole of the West Bank in the period prior to the Oslo Accords in the mid-1990s.²² However, progress continued after administration of the main centres of Palestinian population was transferred to the Palestinian Authority²³ until the recent disruption caused by Covid, despite the Palestinian Authority’s incompetence and corruption.

Mr Lynk claims there is a “*two-tiered system of unequal political, social and economic rights based on ethnicity*”. This is not true. There is different treatment of Palestinians

¹⁸ Kontorovich, *Economic Dealings with Occupied Territories*, 53 Columbia Journal of Transnational Law 584 (2015) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2494964; *Unsettled: A Global Study of Settlements in Occupied Territories*, The Journal of Legal Analysis 2017 <https://academic.oup.com/jla/article/9/2/285/4716923>; *State practice regarding trade with occupied territories* in Duval and Kassoti (eds), *The Legality of Economic Activities in Occupied Territories* (Taylor & Francis, 2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3545928

¹⁹ Diker (ed), *Defeating Denormalization: Shared Palestinian and Israeli Perspectives on a New Path to Peace*, Jerusalem Center for Public Affairs (2018) https://jcpa.org/pdf/Defeating_Denormalization_Final_22_january.pdf pp35-36 (note that Area C does not include East Jerusalem) and pp96-98

²⁰ *Ib*, particularly cap 8

²¹ *Ib*, particularly caps 6-9; *Islands of Peace* <https://www.youtube.com/watch?v=PwJ9JX95u5Q&t=8s>

²² Karsh, *What Occupation?*, Commentary Magazine, July/August 2002 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3187122

²³ See eg <https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=PS> (GDP per capita); <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=PS> (life expectancy); <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=PS> (adult literacy)

compared with Israeli citizens based on nationality, which is normal, legitimate and mandated by the Oslo Accords. However, for the most part, Israeli citizens are treated equally by Israel regardless of ethnicity, as are Palestinians.

Mr Lynk refers to “*settler violence*”. Attacks by Israelis on peaceful Palestinian civilians are disgraceful, as are attacks by Palestinians on peaceful Israeli civilians, but the numbers of casualties are relatively small. For example, UNHRC Report A/HRC/46/65, which he cites, refers at paragraph 25 to the killing of two Palestinians by “Israeli settlers” in the 18-month period from January 2019 to July 2020.²⁴ The most recent briefing to the UN Security Council of the Special Coordinator for the Middle East Process reported many more attacks by Palestinians on Israeli civilians in the West Bank than vice versa.²⁵

Mr Lynk refers to “*discriminatory planning laws*”, “*home demolitions*”, “*forcible population transfer*” and “*forced eviction and displacement*”. Israel is responsible for planning in Area C of the West Bank in accordance with the Oslo Accords. Proper regulation of development by planning control is essential to protect the environment, health, safety and security, and to enable sound economic development with efficient use of natural resources for the benefit of the whole population. When development is properly planned, services such as clean water supply, mains electricity, telecommunications, sewage services, refuse collection and transport links can be organised in advance and in an efficient way. Squalid, unauthorised encampments ignoring planning requirements are highly undesirable and should be removed. Nevertheless, the number of demolitions of unauthorised buildings actually carried out by the Israeli administration in the West Bank is very small compared with the number of demolitions carried out in various countries in Europe.

Mr Lynk claims that “*the settlements are an integral part of the Israeli policy to deny the right to self-determination to Palestinians under occupation*”. He does not cite any evidence supporting this claim. However, a recent Palestinian poll of Palestinians living in East Jerusalem found that 93% would prefer to remain under Israeli rule than to be transferred to the Palestinian Authority.²⁶ We very much doubt that Mr Lynk would respect their right to self-determination; he seems to be interested in Palestinian self-determination only where he can weaponise it against Israel.

Mr Lynk claims that NGOs have conducted “*comprehensive reviews of the human rights impact of the Israeli settlements and the role that corporations and businesses play in furthering the adverse human rights consequences of the settlements*”. These NGOs are highly partisan in relation to Israel, employ antisemites,²⁷ and their reviews are certainly not comprehensive. They make no attempt to assess the considerable benefits provided by businesses in or in the vicinity of settlements to the Palestinian population. Mr Lynk’s

²⁴ This may be compared with the much greater numbers of Palestinians killed in [traffic accidents](#) or [domestic violence](#), although each death is a tragedy

²⁵ <https://reliefweb.int/sites/reliefweb.int/files/resources/Security%20Council%20Briefing%20-%202019%20January%202022.pdf>

²⁶ <https://www.shfanews.net/post/102082>

²⁷ https://secureservercdn.net/45.40.145.151/3e8.04f.myftpupload.com/wp-content/uploads/2019/12/191219_amnesty_final.pdf; https://www.ngo-monitor.org/ngos/human_rights_watch_hr_w/

own claim that these benefits are “*far outweighed on the human rights ledger by the scale of gross violations inherent in the settlement enterprise*” has no basis since he has not assessed the benefits.

The UNHRC Database

Mr Lynk claims that “*This database was developed and released within the broader context of the United Nations’ efforts to promote stronger business practices with respect to human rights.*” This is misleading. No similar database has been prepared by a UN body in relation to any other territory, reflecting the bias of the UN due to the automatic majority held by the members of the Organisation of Islamic Cooperation and their developing country allies.

Mr Lynk’s claim that “*the listed companies have already been subject to rigorous and extensive engagement*” is not true. We refer to pages 9-16 of the enclosed memorandum by Ms Herzberg. In particular, the list sidesteps the legal and factual analysis required by making a seamless leap from the acts of a State to the acts of non-State enterprises. The decisions of the UK Supreme Court in *DPP v. Richardson* and the Cour d’Appel de Versailles in *AFPS and PLO v Alstom and Veolia*²⁸ illustrate the fact that a company cannot be assumed to be responsible for alleged violations of international law by a State in the territory where it operates.

With regard to legal analysis, the UNHRC report admits that it “*is not, and does not purport to constitute, a judicial or quasi-judicial process of any kind or legal characterization of the listed activities or business enterprises’ involvement therein.*”²⁹ As regards factual examination, where the companies contacted did not provide additional information, “*OHCHR relied on desk research to assess the information received from Member States and stakeholders*”³⁰ (emphasis added). Examination of the list suggests heavy reliance on pro-BDS publications from partisan NGOs such as Who Profits and Human Rights Watch.³¹ Moreover, the database uses the nebulous criterion “human rights concerns” rather than “human rights breaches.” Inclusion on the list does not therefore imply any finding of violation.

Finally, it should also be noted that the list does not take into account benefits to Palestinians from the activities of the listed enterprises, which in many cases are very considerable, as discussed above.

Divestment by other pension funds

Mr Lynk claims that KLP announced that it would no longer invest in 16 companies “*because of their corporate links to the Israeli settlement economy*”. This was not the reason given by KLP and reflects Mr Lynk’s false assumption that there is a separate

²⁸ Note 16 above

²⁹ A/HRC/43/71 <https://www.un.org/unispal/document/un-high-commissioner-for-human-rights-report-on-business-activities-related-to-settlements-in-the-opt-advance-unedited-version-a-hrc-43-71/> para 19

³⁰ *Ib*, para 30.

³¹ NGO Monitor, *Analysis of the UN’s Discriminatory BDS Blacklist*, 13 February 2020 <https://www.ngo-monitor.org/reports/un-blacklist-analysis/>

“Israeli settlement economy”. Moreover, as identified by the Norwegian grassroots organisation, Med Israel for Fred (MIFF), an anti-Israel activist employed by KLP as its senior analyst for responsible investments, Kiran Aziz, appears to have been instrumental in this decision. Her social media (downloaded by MIFF before it was concealed) shows her hatred of and prejudice against Israel.³²

Mr Lynk further claims that Norway’s Sovereign Wealth Fund announced in May 2021 that it was *“excluding a series of corporations involved in the Israeli settlement economy from its portfolio”*. In fact, the Fund excluded just two Israeli companies and, again, this was not on the basis that they were *“involved in the Israeli settlement economy”* as Mr Lynk assumes.

Mr Lynk does not mention that, conversely, in 2019 the major Dutch Pension Fund, PGGM, reversed its earlier decision to divest from Israeli banks.³³

Due diligence

Mr Lynk asked for enhanced due diligence for all companies listed on the UNHRC database. For the reasons set out above and in Ms Herzberg’s memorandum, this should be rejected. In the first place, a policy influenced by Mr Lynk’s intervention would be based on error of law, irrelevant considerations and false information. In addition, targeting companies on the UNHRC database without targeting companies operating in territories occupied by other countries or in countries where more serious violations of human rights are taking place would be discriminatory. The fact that the UNHRC and other UN bodies discriminate against Israel, due to the automatic majority enjoyed by the members of the Organisation of Islamic Cooperation and their developing country allies, does not justify local government pension funds in the UK adopting discriminatory policies. We doubt that trustees and managers have good reason to think that beneficiaries of these funds as a whole would support such discrimination. Taking into account non-financial factors in adopting such a policy would therefore appear to be in breach of fiduciary duties, since non-financial factors may be taken into account only where (a) the decision would not involve a risk of significant financial detriment to the scheme and (b) there is good reason to think that beneficiaries as a whole would support the decision.³⁴

Furthermore, British public authorities are bound by the Public Sector Equality Duty (“PSED”) in section 149 of the Equality Act 2010 or similar legislation in Northern Ireland, which requires them in the exercise of their functions to have due regard to the need to eliminate discrimination and to foster good relations between people of different nationalities, ethnicities and religions. Extensive research at US universities has shown a substantial linkage between the promotion of boycott, divestment and sanctions (“BDS”) targeting Israel and antisemitic attacks.³⁵ For example, it was found that *“The best statistical predictor of anti-Jewish hostility, as measured by actions that directly target*

³² <https://miff.no/norge-og-israel/2021/08/11/miff-til-klp-deinvestering-fra-israelske-selskaper-bygger-pa-feil-og-er-del-av-antisemittisk-kampanje.htm>

³³ <https://www.timesofisrael.com/dutch-pensions-group-removes-israeli-banks-from-blacklist/>

³⁴ Law Commission, *Fiduciary Duties of Investment Intermediaries* (2014) (Law Com No 350) https://www.lawcom.gov.uk/app/uploads/2015/03/lc350_fiduciary_duties.pdf at para 6.34.

³⁵ Amcha Initiative reports <https://amchainitiative.org/reports/>

Jewish students for harm, is the amount of BDS activity."³⁶ Record levels of antisemitic incidents were reported in the UK in 2021.³⁷ In these circumstances, adoption of a discriminatory policy in relation to Israel by comparison with other countries would be liable to exacerbate the already high level of tension between Jewish and other communities. Failure on the part of public authorities to have due regard to these considerations would breach the PSED.

Yours sincerely



Jonathan Turner
Chief Executive

³⁶ Amcha Initiative, *Report on Antisemitic Activity in 2015 at US Colleges and Universities with the Largest Jewish Undergraduate Populations* <https://amchainitiative.org/wp-content/uploads/2016/03/Antisemitic-Activity-at-U.S.-Colleges-and-Universities-with-Jewish-Populations-2015-Full-Report.pdf> p19

³⁷ Community Security Trust, *Antisemitic Incidents Report 2021* <https://cst.org.uk/data/file/f/f/Incidents%20Report%202021.1644318940.pdf>