**Pensiondivest.org.uk 15/6/25**

This document is in four parts.

1. The motion.
2. Explanatory note with appendices designed to be provided with the motion to the council. Appendix 3 is the draft survey which has been carefully designed to be apolitical and simple.
3. Separate to what is to be provided to the council, are suggested speaker notes for introducing the motion.
4. Rebuttals to common objections. This list could be longer but covers the common ones.

The format and content of this has been carefully designed after many months of research. If you have any questions about it, please address them to: [pensiondivest@pm.me](mailto:pensiondivest@pm.me)

The survey is also suitable for use by any LGPS scheme employer, not just the council. The results should be forwarded to the relevant pension funds and ideally please also send anonymised results to [pensiondivest@pm.me](mailto:pensiondivest@pm.me)

# Motion calling for a consultation of LGPS scheme member employees, by the council as a scheme employer.

## Motion text:

This Council notes with deep concern the wars currently taking place around the world. On the doorstep and in the community, we have heard from many constituents who are horrified by the human cost of these conflicts. We have also received serious concern from some of our own employees over the fact that their pension contributions are being invested in, and profiting from, major arms companies, nearly all of them foreign, who supply these conflicts with bombs and other weaponry.

For some pension scheme members, it is deeply distressing to know that their wages are being invested in the very companies whose products cause such destruction and loss of life. They consider that profiting from what they are horrified by is deeply hypocritical and unethical, regardless of the political context of any particular war.

We note that the pension fund has not consulted its members on these matters before making these investments. The Local Government Pension Scheme, as a public body exercising statutory functions and fiduciary duties, should not make decisions that disregard the ethical beliefs of its members. We believe this is a failure to properly consider scheme members’ best interests,

The pension fund claims to invest “responsibly” and investments in arms companies are being justified by empty claims of “engagement”. This creates a false expectation that these companies are being actively stewarded or that they might change, when in reality no shareholder resolutions on this issue have been filed by the Fund or LAPFF, and no meaningful change is possible given the nature of these companies and the dominance of large passive institutional shareholders in the United States.

As a major employer participating in the LGPS, this Council believes that investment in arms companies cannot be justified without first establishing that it is supported by a substantial majority of scheme members.

Accordingly, this Council should conduct a simple survey of council employees who are scheme members. The results of this consultation will be shared with the Pension Fund Committee and should be taken into account before proceeding with any new or ongoing investment in arms companies.

## Explanatory note to accompany the motion:

The LGPS is a public pension fund with statutory duties. It is not a private financial entity, and it is bound by both fiduciary law and public law duties to act fairly, transparently, and in the interests of scheme members.

There is a common but incorrect belief that fiduciary duty dictates that the LGPS funds must always maximise returns and that diversification dictates that they must invest in every sector, which funds usually state is their reason for investing in arms companies. In law, this is not true, the fiduciaries have a duty to exercise their discretion freely and fully, unfettered by false, self-imposed absolutes, considering the best interests of scheme members which increasingly is recognised to include consideration of their ethics and morality. Fiduciaries must weigh ethical concerns and arguably should act to protect the most impacted group if financial impact is not significant. Appendix 2 has some relevant case law and legal opinions on this point.

In reality the fund already knows members typically do not want arms investments as shown by funds omitting any mention of their arms investments in their reporting, despite advertising other sectors (e.g. renewables, tech). This strongly implies that the funds know these investments are contentious. If they were confident members supported them, they would say so.

LGPS funds claim to invest “responsibly” or to be guided by ESG principles or UN guiding principles. This gives members a strong expectation that the fund will not invest in companies whose core business is the manufacture and sale of weapons, especially to regimes accused of human rights abuses. Yet all LGPS funds are invested in companies such as Rheinmetall, Lockheed Martin, and Northrop Grumman, with no consultation, no transparency, and no evidence of real stewardship.

Claims of “engagement” are frequently used to justify holding these investments. But these claims do not withstand scrutiny:

* Internally, the arms companies in question are structurally resistant to change: their primary purpose is to manufacture weapons.
* Neither the funds or the LAPPF have filed any AGM resolution aimed at curbing arms production or sales to bad actors.
* Meaningful engagement with arms companies is structurally impossible. The majority of shares are controlled by US institutional investors legally required to vote only in pursuit of financial return. They cannot support ethical resolutions unless those are clearly financially material, which challenges to arms manufacturing are not.

LGPS funds that claim they are engaging meaningfully with these companies are creating a false expectation. They know, or should know, that no such change is possible.

Therefore, the repeated assurance that these companies are being “engaged with” and there is “enhanced diligence”, misleads members into believing that change is possible or likely. This amounts to the creation of a “legitimate expectation” under public law—a belief, encouraged by the fund’s own language, that it is taking action it knows it is not taking and cannot take.

It may also constitute legal unfairness for a pension fund to fail to consider and weigh the ethical perspectives of its diverse scheme members against the potential impact on investment returns. For example, the Avon Pension Fund has acknowledged that if its arms-related holdings had instead been invested in the general market, the performance difference over the past decade would have been within the range of a typical forecasting error. Yet this minimal financial impact was never properly weighed against the non-financial harm caused to members who find such investments morally objectionable.

Instead, LGPS funds frequently claim that their discretion is fettered by a supposed duty to maximise returns or to invest across all sectors. Obligations which, in law, do not exist in absolute terms. By relying on these misconceptions, funds risk breaching both public law duties and fiduciary obligations to act fairly, proportionately, and in the genuine best interests of members.

The motion therefore calls for an honest and fair step: to consult members on whether they support investment in arms companies. If this cannot be demonstrated, the fund should not continue such investments.

This approach reflects the council’s duties as a public body and hopes to restore the voice of scheme members in decisions made for their best interest.

## Appendix 1: Relevant Case Law on Legitimate Expectation and Public Body Conduct

**1. R v North and East Devon Health Authority, ex parte Coughlan [2001] QB 213**  
The Court of Appeal held that a public body’s clear and repeated assurance to a severely disabled claimant that she could live in a care facility “for life” created a substantive legitimate expectation. Frustrating that expectation without compelling justification was ruled to be so unfair as to amount to an abuse of power.  
**Relevance:** Where LGPS funds make repeated public claims that they are engaging with controversial companies responsibly, this may induce a legitimate expectation among members that real change is possible. If funds know that engagement is ineffective but continue to make such claims, it may amount to an unfair and unlawful frustration of that expectation.

**2. R v Secretary of State for the Home Department, ex parte Asif Mahmood Khan [1985] 1 All ER 40**  
This case distinguished between mere policy and specific representations. However, it recognised that even policy-level expectations can be protected where a consistent practice has been followed.  
**Relevance:** Repeated public statements by LGPS funds and their pools about “responsible investment” and “engagement” can give rise to legitimate expectations, especially if members have relied on these representations in forming their belief that their money is invested ethically.

**3. R v Inland Revenue Commissioners, ex parte Unilever plc [1996] STC 681**  
The court found that a long-standing practice of discretion by the tax authority created a legitimate expectation, and a sudden departure from that practice without warning was unfair.  
**Relevance:** If LGPS funds have a practice of claiming to engage with controversial sectors as a substitute for divestment, but this is not backed by any real engagement or shareholder action, it could be seen as an unfair departure from the expectation created.

**4. R v Somerset County Council, ex parte Fewings [1995] 1 All ER 513**The court held that ethical considerations are not inherently unlawful, but they must be relevant to the statutory purpose being exercised. Ethical beliefs may not override a duty unless statute allows it.  
**Relevance to LGPS:** LGPS funds must invest for the best interests of scheme members, and that purpose has been explicitly interpreted to include considering non-financial (ethical) concerns, as clarified by:

* Law Commission, *Fiduciary Duties of Investment Intermediaries*, 2014”,
* *Harries v Church Commissioners* [1992],
* Later DWP guidance on ESG and fiduciary duty.

Therefore, unlike the councillors in *Fewings*, LGPS committees do have a lawful basis to consider ethics *if* they:

* Act in line with their fiduciary duty,
* Consider member views,
* Avoid significant financial detriment.

The point being that *they* *can* take non-financial factors into account. The prominent and repeated claims to being responsible investors creates the expectation that *they do* take them into account.

These cases together demonstrate that public bodies must not create or maintain expectations, explicitly or implicitly, that they know they cannot fulfil, and that they must consider relevant ethical concerns, especially where members are led to believe that those concerns are being addressed.

## Appendix 2: Relevant to the question of fairness.

**1.** **Cowan and others v Scargill and others [1984] 2 All ER 750**  
This case involved a dispute between trade union trustees and others on whether investments contrary to union policy (e.g. foreign energy companies) could be pursued if they offered good financial return.  
**Relevance:** While often misquoted as requiring maximised returns at all costs, the case actually clarified that fiduciaries must prudently balance financial interests with ethical considerations. LGPS funds that claim they are compelled to invest in arms companies to maximise return are misinterpreting their fiduciary duties if they fail to weigh ethical concerns or consult members.

**2. Nestlé v National Westminster Bank plc [1993] 1 WLR 1260**  
This case concerned trustees managing a long-term trust with different classes of beneficiaries. Then-Mr Justice Hoffmann emphasised that trustees must act with fairness in decisions that have unequal impacts on different beneficiaries.  
**Key quote:** “The trustee must act fairly in making investment decisions which may have different consequences for different classes of beneficiaries.”  
**Relevance:** This principle applies to LGPS funds where current, former, and future scheme members may be affected differently by investment decisions. Trustees must not ignore the moral or reputational injury to some classes of beneficiaries (e.g. those opposed to arms investment), even if others are indifferent or supportive. The relative impact on each group, vs impact on returns, should form a part of exercising discretion.

**3. The following excerpt from the seminal work *Fiduciary Obligations* *[[1]](#footnote-1)* articulates the legal principle that fiduciary decisions which unfairly disadvantage certain beneficiaries, regardless of intent, are susceptible to judicial intervention:**

Decisions which are unfair in the consequences to some of the beneficiaries

In exercising a discretion, a fiduciary must take into account the effect his decision will have upon his various beneficiaries. If in fact it operates unjustly upon some of them the courts will intervene on the grounds that it is unfair, irrespective of whether or not the fiduciary himself believes that his decision need not necessarily be unfair even though it can be shown that a particular beneficiary has gained an advantage, or has suffered a disadvantage, for –

[it] is obvious that a decision which is considered to be for the ultimate benefit of the estate may be for the immediate advantage of one beneficiary, and to the disadvantage of the other. *In re Charteris; Charteris v Biddulph (1917)*

[…] The court arrives at its determination by weighing the reasons and circumstances which are said to give rise to the decision – if any reasons are in fact given – against the consequences which the decision occasions to all of the beneficiaries, but particularly to the beneficiary aggrieved.

A common instance in which this weighing has exposed unfairness is the “good business decision” for the dictates of good business are not necessarily synonymous with the interests of the fiduciaries various beneficiaries – a factor to be borne in mind by trustees in particular, in considering the respective interests of income and capital when exercising their power of investment.

The matters which a court will take into account in evaluating a decision and its effects, and in passing on its fairness, are various. But it is possible to indicate the types of consideration which will influence the court:

* Where the fiduciary, whether deliberately or not, exercises a discretion for the purpose of advantaging/disadvantaging only some of his beneficiaries.
* Where the fiduciary, while honestly intending to act in the interests of all of his beneficiaries, takes a decision which in its consequences is unjust to some of them,
* The extent of the detriment suffered or likely to be suffered by the aggrieved beneficiary is always relevant, as is also the estimate of the likely value to the beneficiaries of their respective rights before and after the exercise of the power.
* The nature of the power being exercised, and the consequences which its exercise would have in any event upon the interests of the various beneficiaries, will always be taken into account.

From such considerations the court must decide whether or not the fiduciary – even if acting in all honestly – has failed “to see that he is acting unjustly towards those whose interests he is bound to consider and to protect; and if he is so acting, and the Court can see it although he cannot, it is . . . the duty of the Court to interfere”

In any legal proceedings, the fund’s only identifiable justification for investing in the arms sector would be its misinterpretation of fiduciary duty, namely, the mistaken belief that its discretion was fettered by an obligation to mirror the entire stock market. There is no evidence that the fund gave due consideration to the views or interests of beneficiaries, and nothing on record to suggest that competing ethical concerns were weighed in the exercise of discretion.

“A trustee’s decision must be the product of a genuine consideration of relevant factors; mechanical or fixed approaches are improper and may render the decision voidable.” **Klug v Klug [1918] 2 Ch 67**

Far from being irrelevant or irrational factors, the consideration of impact, both on people and the environment is central to modern standards of responsible stewardship. In the case of arms investments however, such considerations appear to have been unjustifiably disregarded – not on the basis of fiduciary duty, but more likely due to political pressures or institutional reluctance to confront them.

## Appendix 3: Suggested survey

**Staff Survey: Pension Investments and Ethical Concerns**

**Introduction:**  
The Council is seeking the views of staff who are members of the Local Government Pension Scheme (LGPS), regarding the fund’s investments in arms companies. We understand that this issue may raise strong ethical or emotional concerns for some. Your input will help inform the Pension Fund Committee. Responses are anonymous.

**1. Are you currently a member of the Local Government Pension Scheme (LGPS)?**

* Yes, active member
* Yes, deferred member
* Yes, retired member
* No / Not sure

**2. Were you previously aware that the LGPS invests in companies that manufacture weapons, including those that supply governments involved in current armed conflicts and accused of serious human rights violations?**

* Yes
* No
* Not sure

**3. Which of the following best reflects your response to knowing your pension may be invested in arms companies?**

* I find it deeply upsetting or morally distressing
* I strongly object on ethical grounds
* I have some concerns but would like more information
* I am indifferent to this issue
* I believe such investments are appropriate if financially beneficial
* Other / prefer to explain (please use the box at the end)

**4. To what extent do you agree with the following statement:**  
*“It is ethically wrong for public sector pension funds to profit from the manufacture and sales of weapons.”*

* Strongly agree
* Somewhat agree
* Neutral / unsure
* Somewhat disagree
* Strongly disagree

**5. If you would like to share your personal views or experiences—including any distress, ethical concern, or conflict you feel in relation to this issue—please use the space below:**

# Suggested speaker notes for introducing the motion.

**Opening: Public concern and moral injury**

“Chair, colleagues,

We’ve all seen the images and headlines from Gaza, Ukraine, Sudan, and other conflicts—some recent, some ongoing. When out in the community, we’ve heard from many residents who are horrified by the scale of destruction.

But for some of our own employees, the distress runs deeper: they’ve discovered that *their own wages*—via the Local Government Pension Scheme—are being invested in the companies that manufacture and supply those weapons. That’s not a distant issue. It’s personal. And for some, it feels like moral betrayal.”

**What this motion does**

“This motion doesn’t call for divestment today. It doesn’t prejudge anyone’s view.

It simply says: before investing—or continuing to invest—in arms companies, we should ask our staff, our LGPS members, how they feel.

That is a basic matter of respect, transparency, and accountability.”

**Why the current approach is broken**

“Right now, the Fund defends its arms investments by saying it is ‘engaging’ with these companies. But there’s no evidence of that.  
No shareholder resolutions have ever been filed. The companies haven’t changed. They are not going to change—they are weapons manufacturers.

Meanwhile, the majority of their shares are controlled by large US investors who vote against reform. So we’re left with empty language of stewardship, while members are misled into thinking change is possible.”

**Why consultation matters—legally and ethically**

“The Local Government Pension Scheme is not a private fund. It is a public body. That means it has legal duties—to act fairly, to consider relevant matters, and not to create false expectations.

Members have been repeatedly told that their money is invested responsibly. But when they discover what’s really going on, that trust breaks.

If we do not consult them, then we risk making investment decisions that are not just ethically questionable—but procedurally unfair.”

**Closing: A modest, reasonable step**

“All this motion asks is that we survey our own staff—those whose money is being invested—and provide the results to the pension fund committee.

That’s not activism. That’s governance. That’s how a public body should behave when it knows some of its members may be carrying moral injury while saving for retirement.

I urge you to support this motion—not to take sides, but to give members a voice.”

# Rebuttals to Common Objections

**1. "The investments help national defence / supports jobs"**

**Rebuttal:**

“The fund exists to make money; it does not spend money on defence. Defence spending comes from the tax payer funded Defence Budget. The pension fund buys shares on the secondary market to speculate that their price will rise and in the hope that they will take defence budget money OUT from arms companies as dividends.”

**Quick Note:**

* Defence Budgets puts money in – pension funds take money out of arms companies
* The Supreme Court ruled (PSC 2020) that LGPS investment decisions must not be fettered by government defence or foreign policy or politicians.

**2. "Pension funds have a fiduciary duty to maximise returns"**

**Rebuttal:**

“That’s a misunderstanding of fiduciary duty. The Law Commission and DWP guidance are clear: fiduciaries may consider non-financial factors if they have good reason to believe members share the concern, and if it doesn't significantly harm returns.

The Avon Pension Fund reported that removing arms investments would have had little to no impact on returns over ten years - well within forecasting error. So, there's room for discretion—and discretion must be exercised fairly, not automatically.”

**Quick Note:**

* Refer to *Law Commission 2014: Fiduciary Duties of Investment Intermediaries*

**3. "This is politicising pensions"**

**Rebuttal:**

“Ethics and legality aren’t party-political. We’re not asking the Fund to take a political stance—we’re asking that the views of its members be considered before investing in sectors with serious moral risk.

And let's be honest: if investing in arms companies isn’t political, why are we afraid to even ask what members think?”

**Quick Note:**

* Framing the consultation as *procedural fairness* keeps you on neutral ground.

**4. "This isn’t our job to ask / we don’t have the power to change pension fund policy"**

**Rebuttal:**

“It’s true we don’t set policy. But as a major employer in the scheme, we have both a duty and an opportunity to consider and raise concerns on behalf of our staff.

What we’re proposing is modest: a simple survey, the results of which will be sent to the Fund. We’re not compelling investment decisions, we’re informing decision-making.”

**Quick Note:**

* LGPS employers and members have the right to make representations.

**5. "Engagement is already working"**

**Rebuttal:**

“There’s no evidence to support that. No shareholder resolutions have been filed by the Fund or LAPFF to challenge arms companies on their core business.

Engagement is just being used as cover for inaction. The companies haven’t changed—and they’re not going to change. Meanwhile, members are being misled into believing something is happening that isn’t.”

**Quick Note:**

* Emphasise: *No evidence of real stewardship, no plausible mechanism for reform.*

**6. "This would set a precedent for consulting on every investment"**

**Rebuttal:**

“We’re not suggesting a referendum on every shareholding. We’re talking about sectors that raise clear, foreseeable moral and reputational concerns for members—like arms, fossil fuels, or tobacco.

If we don’t consult in *those* cases, when would we?”

**Quick Note:**

* We're proposing a focused process, not a general burden.
* “Materially contentious sectors” is the line to use.

**7. "This could be costly or time-consuming"**

**Rebuttal:**

“A basic staff survey costs very little—far less than the reputational damage of continuing controversial investments without consent.

And it’s not a complex consultation—we’re not asking for essays. Just a clear, respectful way for people to say how they feel.”

**Quick Note:**

* Use words like *"respectful,"* *"proportionate,"* and *"reasonable due diligence."*

**Summary Cheat Sheet**

| **Objection** | **Key Rebuttal Phrase** |
| --- | --- |
| Defence/jobs | “Defence Budgets puts money in – pension funds take money out of arms companies” |
| Fiduciary duty | “Discretion must be exercised fairly—not blindly.” |
| Politicisation | “Ethics aren't party-political—this is about fairness.” |
| No power | “We're not changing policy—just asking staff and sharing the result.” |
| Engagement works | “No evidence, no resolutions, no change.” |
| Slippery slope | “Only for sectors that are clearly ethically contentious.” |
| Cost | “Cheaper than reputational damage. And it’s a simple survey.” |

1. Paul D Finn, *Fiduciary Obligations* (Law Book Co 1977) 60, 62-64 [↑](#footnote-ref-1)