

Local government and ethical procurement - a briefing

- In recent years, local councils across the UK have adopted fair trade principles or excluded fossil fuel, tobacco and arms companies from their investment portfolios. Many councils have passed motions stating they will not procure services from companies that violate human rights or from construction companies that blacklist trade union members. Some have adopted measures aimed at excluding from tender exercises companies that participate in Israeli violations of international law.
- The government is now undermining the ability of local councils to take ethical stances that reflect the views of their community on a whole range of issues. This is an attack on local democracy that runs counter to the government's localism agenda.
- The Palestinian Boycott, Divestment and Sanctions (BDS) movement aims to hold Israel accountable for its violations of international law and end international complicity with those violations. In the UK, a wide range of trade unions, unions, local councils, student unions and other civil society bodies have made democratic decisions to support BDS.
- On 9 March 2016, British security company G4S announced that it would sell its Israeli subsidiary. G4S has been the target of protests over its participation in human rights violations related to Israeli checkpoints, illegal settlements and prisons where Palestinians are held in violation of the Fourth Geneva Convention and tortured. The G4S announcement followed intensive BDS campaigning, supported by a number of trade unions and student unions. This is an example of how civil society BDS campaigns can ensure companies adhere to international law and human rights standards.

I. What steps is the government taking?

In October 2015, a Conservative party press release announced that the government would take steps to “prevent town hall boycotts”. These measures have advanced in two separate ways:

1) through a policy note on public procurement and 2) proposed changes to local government pension scheme regulations.

Public procurement: On 17 February 2016, the Cabinet Office published a Procurement Policy Note (PPN)¹ that restates existing legal obligations regarding public sector procurement processes. It uses World Trade Organisation (WTO) rules to argue that public bodies cannot refuse to deal with a company because of its country of origin.

The document is clearly designed to intimidate councils into falsely thinking that they are no longer allowed to exclude companies that violate human rights from tender exercises.

However, the document does not introduce new legal obligations or requirements for public bodies. Nor does the policy guidance note prevent local councils from excluding companies from tendering processes due to their role in human rights violations, confirmed to be perfectly legal by the previous government.²

Local government pensions: On 25 November 2015, the government launched a consultation regarding new regulations for how local government invest pension funds.³ This includes a proposal to give the Secretary of State

¹ <https://www.gov.uk/government/news/putting-a-stop-to-public-procurement-boycotts>

² <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120523/text/120523w0004.htm#12052384000139>

veto power over local authority investment decisions and states that the government will publish additional guidance making clear that investment decisions “should not pursue policies which run contrary to UK foreign policy”. That guidance has not yet been published.

2. An attack on local democracy

In recent years, dozens of local councils have passed motions to adopt fair trade principles, divest from fossil fuel companies, tobacco companies and the arms trade and pledging not to work with construction companies that blacklist trade union members (see examples in section 7). These are important ethical stances that reflect the values and opinions of local communities, and most importantly, pension holders themselves.

The government does not appear to have introduced new legal obligations regarding procurement. However, the rhetoric surrounding the publication of the Procurement Policy Note clearly aims to discourage local councils from taking ethical procurement decisions.

These steps fatally undermine the government’s stated commitment to transfer power to local government and communities. They also represent a serious attack on local democracy.

These moves may also lead to public distrust and decreased engagement in local government, as citizens will feel that they have no recognised stake or ability to affect crucial decisions about their own communities.

3. Violating the government’s obligations and policy positions

Any moves aimed at making it more difficult for public bodies to exclude from tender exercises companies that are complicit in human rights violations, including human rights violations related to illegal Israeli settlements, contravene existing obligations and policy positions, including:

- **International law:** In 2004, the International Court of Justice ruled that all states have an obligation not to provide aid to Israeli violations of international law. This confers on all state bodies an obligation not to maintain trade with illegal Israeli settlements or that supports other violations of international law.⁴
- **UK Foreign Office guidance:** Along with more than 20 other EU countries, the UK government has published guidance warning businesses about the legal and economic risks associated with doing business with illegal Israeli settlements and related activities in occupied Palestinian territory, including East Jerusalem. The government’s actions with regard to public bodies are at odds with this guidance.⁵
- **EU directive:** The EU directive regarding procurement sets out that public bodies should have the right to exclude from tender exercises those companies that can be shown to have committed “grave misconduct”. The UK government has confirmed that this applies to violations of human rights and international law.⁶
- **UN Guiding Principles on Business and Human Rights:** The UK has committed to supporting the UN Guiding Principles on Business and Human Rights, which include a recommendation that governments and state bodies hold to account companies that violate human rights by “withdrawing existing public support or services, or where that is not possible, denying their future provision.”⁷

³ Local Government Pension Scheme: Revoking and replacing the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009

⁴ http://www.alhaq.org/images/stories/PDF/2012/Legal_Memo_State_Responsibility_FINAL_16_07.pdf

⁵ <https://www.gov.uk/government/publications/overseas-business-risk-israel/overseas-business-risk-israel>

⁶ <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120523/text/120523w0004.htm#12052384000139>

⁷ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

4. Widespread opposition to government proposal

- In a single month, over 26,000 individuals submitted responses to the government consultation on the new investment regulations, opposing what they called an 'attack on local democracy'.
- Several pension funds have expressed concern over the measures, for example the Environment Agency Pension Fund (EAPF).
- Charities, human rights organisations and environmental organisations have all decried this move and warned about a potential 'chilling effect', warning that such intimidation will have broader implications for free speech, healthy debate, and trust in our democratic system. This includes Amnesty International, War on Want, Campaign Against Arms Trade, Global Justice Now, Community Reinvest, 350.org, Fossil Free UK, Palestine Solidarity Campaign and many more.
- A number of trade unions, most notably UNISON which represents local government pension holders, have voiced serious concerns that this move takes away the rights of pension holders and grants unprecedented power to central government.
- Local councillors from across the political spectrum have voiced public opposition to the crackdown.

5. What is the Boycott, Divestment and Sanctions (BDS) movement?

The Boycott, Divestment and Sanctions (BDS) movement was launched by Palestinian civil society in 2005. It calls for non-violent campaigning to pressure Israel to comply with international law.

Boycott and divestment tactics in support of Palestinian rights under international law have been endorsed by the Trades Union Congress and more than a dozen individual trade unions, the Green Party, the National Union of Students and dozens of student unions.

Kate Tempest, Jarvis Cocker and Roger Waters from Pink Floyd are among the 1,000 artists who recently pledged not to perform in Israel over its occupation and human rights violations.

British company G4S and French multinationals Veolia and Orange and Ireland's biggest company CRH are among the major companies to exit the Israeli market following high profile campaigns against their involvement in Israeli violations of international law.

6. Anti-semitism and community relations

At its core, the BDS movement is a movement against Israel's systematic discrimination and apartheid policies. Together with the BDS movement, War on Want is opposed as a matter of principle to all forms of discrimination, including anti-Semitism and Islamophobia. The world is growing increasingly weary of Israel's attempts to conflate criticism of its violations of international law with anti-semitism.

- Criticism of Israel is not anti-Semitic, and we must reject attempts to stifle opposition to violations of international law by calling such stances anti-Semitic.
- A real threat of anti-Semitism comes from the growing power of white supremacist and neo-nazi groups, groups that also spread hatred towards Muslims, immigrants, LGBT people and others. This is well documented and must be confronted. However, confronting bigotry is not done by clamping down on lawful efforts to boycott and divest from companies guilty of violating international law. Conflating the two is dangerous and irresponsible.

7. Some examples of ethical stances taken by local councils

- Swansea City Council and several other UK city councils voted not to award contracts to Veolia, which at the time operated transport services for illegal Israeli settlements. Facing mounting pressure over its role in illegal Israeli settlements, Veolia sold its Israeli business in 2015, ending its participation in human rights violations that have been condemned by the UN.
- Local authorities in Oxford, Bristol have voted to divest from fossil fuels and South Yorkshire and Haringey Council and the Environment Agency have all decided to divest from certain types of fossil fuel investments.
- More than 450 local councils have chosen to support Fairtrade.
- More than 30 local councils have signalled that they are taking steps to use ethical procurement to avoid contracting construction companies that blacklist trade union members.

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