



Mr D Harte
UCU Pensions Official

Your ref	
Our ref	DKB/JMR
Date	9 February 2024

Dear Dooley

Thank you for your letter of 29 January.

I share your distress at the continuing horrific events in the Middle East. The Order from the International Court of Justice (ICJ) on provisional measures of 26 January, rightly notes *'the Court is acutely aware of the extent of the human tragedy that is unfolding in the region and is deeply concerned about the continuing loss of life and human suffering.'* I wholeheartedly share that deep concern.

The interim measures stated by the ICJ shine an important light on events and place imperative immediate demands on the State of Israel, Hamas and others. I thought it important to just note, and we have understandably sought clarification on this, the standing of this latest development. In particular to observe that the Order is not of itself a decision by the ICJ on whether it finds as a matter of law and fact that the violations alleged have occurred or not at this stage. What will follow is due process by the Court, involving several stages, before it reaches any decision, which can often take many years. The Court's intention at this stage appears to be stating measures that, in its view, are aimed to prevent irreparable harm to the parties before a final judgment is handed down. Its standing is that it is binding on the parties involved in the case (that are UN members) and thus in this case, Israel not any wider member states.

Whilst this is of course a hugely emotive and important area that the Court has been deliberating on in the awarding of interim measures, it does not change the legal or regulatory investment backdrop we operate to and the robust investment framework for USS we've outlined in our letters of 16 November and the discussion of 4 December. That is of course the same as other ICJ cases in recent times (including where genocide has been alleged) where the court has ordered provisional measures.

The Order does though, form part of the evidence and context in which we consider our legal duty to invest in the best financial interests of the scheme's members and beneficiaries. As we've previously noted we keep our investments under regular review and we are considering the implications of the Order. Any subsequent final judgement from the ICJ, future enforcement actions by the UN Security Council and imposition of international sanctions would be similarly important.

We have a number of forthcoming Trustee meetings where the Board will receive updates on investment issues (and this will include the Order and your letter) and therefore we do not intend to call a specific Trustee meeting. I would note that we haven't called specific Board meetings in respect of previous similar ICJ Orders.

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I understand that you and UCU colleagues are due to meet USS colleagues on 12 February and 26 February to specifically discuss (amongst other things) investment in the defence sector and fiduciary duty. I would suggest that your letter be covered as part of those discussions, which the trustee board will be interested to hear about. I can see a number of potential challenges to points you have raised. Your letter makes a much wider call for divestment than USS has ever previously considered or adopted (including those we took in respect of Russia-related investments) and the descriptions of *'Israeli investments'*, *'those companies that have been found to be complicit and give support to this corrupt and now genocidal government'* and *'all investments that may be linked directly or indirectly to the Israeli Government'* are potentially very broad and would seem to involve aspects of opinion as stated. It would be helpful if UCU could share more detail in advance or at the meeting about how you would propose to approach the preeminent financial best interests context, observing of course that all of us can only act on matters of established fact or law.

I wholeheartedly agree with you that *'USS must support the rule of law'*. I trust that you will understand that the Trustee must seek to act within the legal duties that fall upon it. Not acting in the specific manner that you request cannot and should not be construed as our not yearning for a rapid end to the current violence in the Middle East.

Kind regards

Yours sincerely

Dame Kate Barker
Chair, USSL Trustee Board