

Regulatory Reform Committee

Oral evidence: Legislative Reform Order (Private Fund Limited Partnerships) 2017, HC 1042

Tuesday 21 February 2017

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Watch the meeting

Members present: Andrew Bridgen (Chair); Rebecca Harris; Rob Marris; Roger Mullin; Jeremy Quin.

Questions 1-59

Witnesses

Elsbeth Berry, Reader in Law, Nottingham Law School, Gwyneth Nurse, Director of Financial Services, HM Treasury.

Examination of witnesses

Witnesses: Elspeth Berry, Reader in Law, Nottingham Law School, Nottingham Trent University, and Gwyneth Nurse, Director of Financial Services, HM Treasury.

Q1 Chair: Welcome to this session for the Regulatory Reform Select Committee and the LRO before us to do with private fund limited liability partnerships. I would particularly like to welcome Ms Berry, who has come from Nottingham University Law School, which is a very fine university that I attended some time ago and is very important.

Elspeth Berry: I have to say, however, it is Nottingham Trent University.

Chair: That was a pity when I was there, so not quite as important. Thank you both for attending. This is a fairly interesting LRO, probably the most interesting one I have seen in the seven years that I have been on this Committee. Given your correspondence, Ms Berry, would you, in just two or three minutes, give your view of your concerns about the LRO as it stands at the moment and the reasons for you writing to this Committee to make these thoughts known?

Elspeth Berry: I have some concerns about the content of the LRO and the way it is drafted and if the Government are going to proceed with this, there is room for quite significant improvement in what is in there. I am also concerned about two wider things. One is that there is another investigation going on into the criminal activities of limited partnerships in Scotland and pushing this through while that is not yet decided seems unfortunate timing to me. However, whether or not this, in my opinion, is improved, if it does come into the law I am concerned that it is only for a very small subset of limited partnerships and not for all limited partnerships.

Q2 Chair: Okay. Gwyneth, could you introduce yourself and your position?

Gwyneth Nurse: I am Gwyneth Nurse and I am the Director of Financial Services at the Treasury.

Q3 Chair: Were you at the first evidence session we took?

Gwyneth Nurse: No. It was my deputy director with responsibility for this area, but I am afraid he is off sick at the moment, so I have come to talk to you about it today.

Chair: That is his loss and our gain, obviously. We have some questions that we would like to probe the witnesses with, if we could start with Robert.

Q4 Rob Marris: This is for Ms Nurse. This seems to go back to a Law Commission report in 2003. Do you have any sense of why it has



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taken 14 years?

Gwyneth Nurse: That is an excellent question, which I have asked myself whilst I have been learning more about the subject area. As you say, the Law Commission published in 2003 and the then Department for Business Enterprise and Regulatory Reform undertook a consultation that took them until 2008. They then brought forward their own Legislative Reform Order and in their wider consultation they found a number of things that were too difficult to proceed with. They decided to break off into smaller Legislative Reform Orders and then they did not proceed down that track. I do not have the detail about why that Department did not proceed at that time.

In the meanwhile, in 2013, this came to the attention of the Treasury and we started to receive representations from industry about some administrative improvements we could make to the way limited partnerships worked, specifically for the asset management sector. This coincided with us launching our investment management strategy, so that was included in that paper. That received favourable opinion, so we then proceeded to a consultation in 2015, which has resulted in the LRO now. From our involvement, it has still been four years since 2013, which seems to have taken us quite a long time but that is basically my understanding of what went before. I do not think these particular proposals that we have put into the Legislative Reform Order were necessarily controversial, but there must have been elements of the previous proposal that were.

Q5 **Chair:** It is better than rushing into things, is it not? How long have you been involved with this LRO?

Gwyneth Nurse: My Directorate has been running this. I have been in post for a couple of years, so we have been running with this since 2015, when we went out with the consultation. Why has it taken us that long since then? We consulted, we brought forward the responses; we did the impact assessment; we laid the Legislative Reform Order. These things take time to go through the process.

Q6 **Roger Mullin:** Good afternoon, ladies. I have been very concerned about the use of Scottish limited partnerships for large-scale international criminality. Could you set out for the benefit of the Committee the difference between Scottish limited partnerships and those in England and Wales, and could you give a view as to the relative amount of criminality produced by each type?

Gwyneth Nurse: I can certainly have a go at the first part of that. There is one main difference, we think, between a Scottish limited partnership and an English limited partnership, being that a Scottish limited partnership has legal personality where an English limited partnership does not. "Legal personality" means the Scottish partnership is a separate legal entity, like a company. In the English limited partnership, the partnership is always treated as an unincorporated group



of individual partners. That is the fundamental difference. The Legislative Reform Order that we have brought forward and the policy approach underpinning it does not affect that question. The legal status of the Scottish partnership remains in place, so the Legislative Reform Order applies in the same way to the English and Scottish limited partnerships. The changes we are making we believe to be reasonably minor and suitable for an LRO; obviously, Ministers made that decision. As to the criminality of Scottish or English partnerships, I am not qualified to answer that question.

Q7 Roger Mullin: That is very interesting. As Ms Berry indicated, there is a review being undertaken, which is following quite a lot of activity in previous Bills. The review is very welcome; it is recognition that the Government recognise there is a problem, so why on earth is this being rushed through using this device rather than waiting to get the result of the review? The consultation is due to end on 17 March.

Gwyneth Nurse: Obviously, there is a timing point there for the Committee to consider. Bearing in mind the 2013 investment management strategy, the 2015 consultation, I do not think we have been rushing particularly. We have been following due process, making sure we have consulted properly with all parties. The Department for Business call for evidence has caught up with the process, I guess, so Ministers made the judgment that we would proceed with the Legislative Reform Order. Indeed, we laid it on the same day that the Department for Business call for evidence came out. The officials have been liaising closely together. We think the changes that are in the Legislative Reform Order are appropriate changes. If the Department for Business call for evidence comes out and wants to make broader changes to limited partnerships to address the concerns that you are concerned about, then they would also apply to these private fund limited partnerships.

Q8 Roger Mullin: If I could sum up then, you think it is important just to follow a process because it is there rather than adopting good practice and waiting to see the results of a review.

Gwyneth Nurse: That is a question of judgment. It is fair to say we have not particularly been rushing the process and the timing is indeed an interesting timing. That is all I would have to say about it.

Q9 Chair: Gwyneth, on the timing, obviously, we all want the City of London to be competitive. It has to compete in world markets and in a changing regulatory environment. Has the fact that we have now voted to leave the European Union been any influence on the Department, do you believe, to bring this forward at this time?

Gwyneth Nurse: The situation does mean that it is more important than ever to get the framework right to make sure we are a competitive jurisdiction for funds to be located. It definitely gave us a sense of urgency in terms of thinking, yes, we need to get these changes in place. As Mr Marris said, they have been a long time coming, so we wanted to



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proceed, bearing in mind the wider piece of work, which, if it makes changes to the broader framework of limited partnership legislation, can apply to these limited partnerships too.

- Q10 Rebecca Harris:** You have estimated that the net benefit of reducing some of the administrative burden on industry is about £3.3 million over a 10-year period. On the flip side of that, what estimates have you made of the potential costs, perhaps, in terms of transparency and the reputation of fund managers in England through maybe aligning them more closely with jurisdictions with slightly less stringent regulation?

Gwyneth Nurse: Obviously, the changes are deregulatory and we have the impact assessment, which sets all that out. We thought carefully about whether taking away some of the requirements for transparency would have a negative impact and, following consultation with the sector, we concluded that they will not have a negative impact. For example, consultation respondents explained that the term of a partnership is not useful when assessing the prospects of the business and they highlighted a different issue relating to the dissolution of partnerships. We tried to look at the negative side as well as the positive side and, on the positive side, the whole purpose of the investment management strategy was to help the UK to compete in an increasingly global fund market.

The changes do bring us into line with other jurisdictions, as you said, and, in a way, they are not game-changing in and of themselves, but they are part of a broader push to help create the conditions where private funds can set up here in the UK. It is an area where the UK is successful. Obviously, there are competitive countries, Luxembourg in particular, so us bringing the private fund limited partnership into being will allow limited partnerships to set up here, whereas at the moment there are barriers in the way.

- Q11 Jeremy Quin:** You referred just then to the other jurisdictions and you mentioned Luxembourg. Are there other jurisdictions where these rules apply?

Gwyneth Nurse: Yes. The Channel Islands, in particular, have a well-established method of doing this and I believe France are also introducing some changes to their legislation as well, so this is generally us moving in a direction of travel that is quite widely adopted.

- Q12 Jeremy Quin:** To the extent that you have discussions with your equivalents in the G7 and the EU, is this regarded as an outlandish thing to do or is it regarded as mainstream?

Gwyneth Nurse: It is absolutely mainstream, yes. It is following a pretty well established track. In fact, Luxembourg acted in 2013, so we are behind and are trying to catch up.

- Q13 Chair:** As you have explained, the savings over a 10-year period are relatively modest. If this LRO is passed through, how will you promote this to the industry worldwide and what will success look like?



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Gwyneth Nurse: It is always slightly difficult to judge these things. At the moment, we have something like 250 fund managers here, managing about 780 funds. The impact assessment suggests that around 20% of those might turn into private fund limited partnerships, saving them a reasonably small amount of money each. We think every limited partnership that is set up in this space in the future will be a private fund limited partnership and it will save each fund between about £20,000 and £30,000. More widely, though, it sends a message that we are interested in this area; that the UK is open for business; that we are interested in modernising our regulatory regime—the legislation that we are looking at is over 100 years old. It is part of a broader framework that enables the UK to be competitive. It has those wider implications.

Q14 **Chair:** If it is such a good thing—obviously with modest savings—why would all firms not convert?

Gwyneth Nurse: I guess there is some administrative hassle involved in converting. I must admit I have not looked in absolute detail at the question of why the other 80% might not convert. Quite a lot of them have a limited life, so it may not be worth it for the remaining life of the partnership.

Q15 **Chair:** However, you would expect all new funds to be set up using this vehicle.

Gwyneth Nurse: That is our anticipation from our consultation, yes.

Q16 **Rebecca Harris:** Ms Berry, when you introduced yourself you set out broadly your concerns. Could you give us a bit more detail about what your concerns are?

Elspeth Berry: Reducing regulation has to be considered very carefully. It is fairly minimal regulation as it is, through our partnership legislation. That is a good thing and that is why partnerships have been very successful. I would like to say it is a 1907 Act; it has its defects, but it is an impressive piece of legislation. If anyone has engaged with the Companies Act 2006 or 1985 or whatever it was in 1949, around that time, they are fairly horrific pieces of legislation, so we have something that is quite good.

Taking away some of the key elements of it, for example, the capital contribution, I understand that it is normal for limited partners to contribute most of what they put in by way of a loan, so maybe it will not have a big effect. However, the idea behind that capital contribution is that there is money there for the business straight away from the limited partners and it does give some idea and some security to people involving themselves with the business. If there is nothing there, they can also see that and make their own judgment. To take that away entirely would be unfortunate.

I have seen, in the Treasury's follow-up questions, they talk about these businesses being very sophisticated and able to reach their own



agreements and, in most cases, they will do that and they can do that. Relying on what will still be fairly bare-bones legislation in the 1907 Act would be probably unwise for such a sophisticated business, and I do not think they are likely to do it. For example, with taking away limited partners' duties, I still think that should be the default position. If any partnership, not just limited partnerships or PFLPs, wishes to change the content of those duties, they can do that with the agreement of all the partners and everybody can see what it is that they are signing up to. My co-partners do not have to tell me these things; they can carry on competing businesses.

However, if we take those away from the default duties and simply leave it to the partnerships, that seems, to me, going in the wrong direction. It is better to have those default duties and if somebody wants to take them away they can, but if they choose not to they are there. They do not have to then think, "Okay, we would like to have those duties".

Q17 Chair: Ms Berry, you will appreciate, as explained by the Treasury and the documents supporting this LRO, this is going to be a vehicle for a very sophisticated clientele. Does that not give you some comfort that the people operating in this area have those skills and knowledge?

Elspeth Berry: It is quite possible that a lot of people do, but that does not seem, to me, to be a sufficiently compelling reason to take away the safeguards for people who might not, when they are doing relatively little harm, if any, in where they are. The fact that people are sophisticated financial investors—not everybody is, not everybody understands the full ramifications of every particular point, but even if they are it does not mean that they cannot be taken advantage of or that things cannot go wrong. Of course that is a small minority, but, as I say, reducing regulation increases the risk and that would be unfortunate.

Q18 Chair: What is your response to these allegedly more competitive vehicles being used in other jurisdictions, such as Luxembourg? Are you aware of any of these?

Elspeth Berry: It is not my area. My main area is looking at English law. I have looked a little into American law on the subject. I would say that we have to be careful what it is that we want to be. We offer various sophisticated business structures and financial products, which have made this country and this city very successful, and I agree that it is important that we go on doing it, but I do not think it is necessary to change some of the aspects that the Treasury is talking about changing for this one relatively small group. The business vehicle is working as it is.

Q19 Rob Marris: You have expressed your concerns about the proposed changes to the capital contribution. Flipping it around the other way, if those changes go through, who is likely to be disadvantaged? Who are you concerned about, as it were?



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Elspeth Berry: If you are looking at what capital there is, in the past you would see there was this amount and you would know that the limited partners—

Rob Marris: Because it was registered at Companies House.

Elspeth Berry: Yes, because the amount has to be registered. Now it will not have to be registered. If somebody had put in money by loan, you never were going to see that, but if somebody had put in money in capital, you would have seen that. You could have seen it go out and, if it went out, the partner would remain liable for that. That is all going to disappear. If all the limited partners are happy with this then they can go on putting their small amounts in, but the business might have other creditors. I know that is not the concern of these particular funds, but there can be other people involved. There could be employees, suppliers or lenders; there could be other people involved.

Q20 **Chair:** Can I just clarify that point, perhaps, with Gwyneth? Are you aware what proportion of those 780 funds have real capital in there as opposed to capital put in as a loan and would have any tangible assets for creditors?

Gwyneth Nurse: I do not have a precise figure for you, but what I can say is, from our consultation and the responses to it, our understanding is the absolute usual practice is for £1 of nominal capital to go in from each partner. I can see the point, but we think, in practice, for this particular kind of vehicle it is not a consideration.

Q21 **Jeremy Quin:** I respect what Elspeth is saying. It is almost a case of the horse going and the bolt, and you could have wished to come here and say we should not allow partners to contribute capital by means of a loan, which would be a respectable position. That is what is happening and I just wanted to test again on the sophistication of the investors, because a lot does hinge on that. Are these instruments bought by qualified institutional buyers and private sophisticated investors? Is that the case and how do we know that to be the case? That is more to Gwyneth than to Elspeth.

Gwyneth Nurse: That is definitely the case. These are either very high net worth individuals who are sophisticated or institutional investors. The evidence base for that comes through our consultation and the nature of the responses, as we set out in the documents. They are not sold to retail investors. They are not appropriate vehicles for retail investors.

Q22 **Jeremy Quin:** If I may just follow up on that. Clearly, you are hoping, as a result of this process, albeit that it is at the margins, to see an expansion of the industry, an expansion of the range of offerings to sophisticated investors. Do you perceive a risk that, as part of that expansion, suddenly these things are marketed on a wider basis to people who are less sophisticated and may assume that there is real capital behind these funds?



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Gwyneth Nurse: I do not see that risk, because of the regulatory regime that is in place from the Financial Conduct Authority. They cannot be marketed out to retail investors under the existing regulatory framework, so unless that was to be changed, and there are absolutely no plans to change that, or the FCA suddenly took a different set of decisions, then that risk is not there.

Q23 **Jeremy Quin:** At the risk of flogging this to death, the nature of the people buying this, either it is people who are qualified institutional buyers, they are sophisticated in their own right, or it is via an intermediary who is on the hook for explaining to their clients the nature of the capital underlying these vehicles.

Gwyneth Nurse: Yes.

Q24 **Jeremy Quin:** Or is making certain it is an appropriate investment for the nature of their risk appetite.

Gwyneth Nurse: Yes, and we consulted with the FCA as we were making these changes and they were entirely content with the decision.

Q25 **Rob Marris:** Ms Berry, you referred earlier to your concerns about the removal of certain duties and you would prefer, I think, and tell me if I misunderstood you, a model where there were default duties, which could then be removed. You would start with a list of duties, which might then be subtracted from rather than starting with a blank sheet and adding to it and starting that end.

Elsbeth Berry: Yes.

Q26 **Rob Marris:** I also understand the Government are proposing a reduction in the financial reporting requirements for limited partners. Do you have any concerns about that, because it does concern me, potentially? You may be able to allay my concerns.

Elsbeth Berry: I do not think I will be the one to do that. I do not know the detail of the proposal you are referring to, but one of the difficulties, which seems to be a particular problem, in my view, with limited partnerships is there is the idea behind a general partner is all the partners have personal liability, and, in return for that, they do not have to disclose their finances, they do not have to register and so forth. With a limited partnership you reduce that, because obviously there are limited partners, but you still have to have at least one general partner who remains on the hook. However, I understand for this type of financial vehicle it is very common that the general partner does not effectively have unlimited liability, because it is a further limited liability vehicle, either a company or an LLP.

There was a European directive that applies to certain partnerships, which means that there has to be some sort of disclosure where all the partners effectively have limited liability. There were some loopholes in that. I know originally—and I do not know if this has changed—it did not



apply to LLPs, which was a concern of mine, because you could have a problem there. Ultimately, if the reports are not there, either because of that directive or for any other reasons, if the reports do not exist in the corporate body somewhere or if they do exist but they are not clearly linked through to the partnership—and there is no way of limited partnerships doing that, as far as I am aware, at Companies House—then even if the information is out there and the corporate partner can say, “We disclosed everything”, yes, but it is in your corporate accounts and it is not obviously here in the limited partnership accounts, because they are not registered. If the issue is that, effectively, there is limited liability here and, therefore, we should be seeing the accounts, that is not, as I understand it, easy, and in some cases it may not even happen.

Q27 Rob Marris: Would you prefer the reporting requirements to go the other way, so that an investor would know that the ultimate partner, as it were, had limited liability and did not have a bottomless pocket, so you would know that?

Elspeth Berry: Yes. I am just trying to think about it. I suppose in the information you give to Companies House you would give the name of the general partner or partners and that would then disclose if they had limited liability status, because it would have the corporate name. In that sense, it would be disclosed. Assuming the level of sophistication that is suggested, presumably you would look at that and think, “Yes, that person has limited liability, so that is possibly a worry, because nobody here has personal liability”.

Q28 Rob Marris: As far as you are aware, under the proposed new regime that would still be the case in terms of what had to be reported, so the sophisticated investor could look it up and find out about the general partner.

Elspeth Berry: The fact they were limited or an LLP or it is a new limited partnership, which also has to disclose—there is a question in my mind anyway about whether a partnership can be a partner, although I understand that does happen—that might put you on notice, but it is still asking quite a lot, I would think, even of people who are sophisticated investors to address their minds to the corporate forms and the various possibilities for limited liability.

Q29 Chair: Gwyneth, would you like an opportunity to come back on this?

Gwyneth Nurse: I think the two sections we are talking about here are section 28 and section 30, which are all about the duties of the investors, the limited partners to render accounts and information that is directly relevant to the partnership, and there is a duty not to compete with the firm. I think those two duties are in point. In our observation, it is a bit like the capital rules. We have noted and, indeed, it came through the consultation that partners can already disapply those particular duties under section 19 of the Partnership Act.

Q30 Chair: Generally, do they do so in the vehicles that are used?



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Gwyneth Nurse: Yes, they do so already. Basically the existing framework increases regulatory burden, so this is something that already happens. You have to go through a process, so what we are doing is just taking away the process that already exists, so it is a deregulatory measure.

Q31 **Rob Marris:** That is in terms of duties, but what about the reporting requirements?

Elspeth Berry: Yes, sorry, we may have been talking about different things. I was thinking about the wider accounting picture rather than sections 28, 29 and 30 in terms of the accounting, in a sense, meant in the partnership legislation.

Gwyneth Nurse: Okay, so I will have to come back on that specific point.

Rob Marris: Have a think about it, yes.

Q32 **Roger Mullin:** The Government seem very confident that creditors' interests are protected in dealing with private fund limited partnerships. Are you as confident as the Government are that creditors' interests are fully protected?

Elspeth Berry: No.

Q33 **Roger Mullin:** Can you explain a little more?

Elspeth Berry: As I mentioned earlier, in principle, I can see the arguments in favour of reducing regulation and something like the Companies Act, yes. For something like this, which is very light-touch regulation in the first place, in a way it is not the sophisticated businesses that really need any kind of deregulation, because they will and can, to the extent that the law thinks it is appropriate, do it by choice. It might be more of an argument for other businesses that perhaps do not realise the ramifications.

Q34 **Chair:** However, this vehicle is not open to unsophisticated investors.

Elspeth Berry: No, and I take that point, but the fact there is not very much risk with the kind of vehicle that we are talking about, as the Treasury says, and that is not within my knowledge, but assuming it is correct that there is very little risk of people not understanding or not knowing, or people operating the business doing something they should not because they are all highly regulated by the financial authorities or other regulators, I do not think that removes the risk. There still remains a risk and for the very modest cost savings for a business that, in most cases, I would imagine, will get legal advice and will draft their own agreement, I think we are going in the wrong direction.

Q35 **Roger Mullin:** You will have to forgive me; I am maybe not very bright, but it seems to me that what is being said is that we can have less regulation even than existing Scottish limited partnerships and the like,



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which are subject to significant international criminal abuse. As I understand it, is it not the case that we will not even necessarily know where the states are that corporate partners may be registered in? We will not know the registration numbers; we will not be able to trail them in the same way that you have the criminality in SLPs. It strikes me that for the sake of a small gain in regulatory reduction we are opening up a considerable risk for international criminality, and we know some of the international criminality involves not small guys; it involves big institutions. Do you think I am concerned about something I should not be concerned about?

Elspeth Berry: In my opinion, there are grounds for concern there. As I say, I am certainly not an expert on the way financial products are operated in other jurisdictions and it depends on the outcome of the current investigation, but there seems to be no requirement for the partners to be in the UK or, effectively, for the business to be in the UK. As I understand it, if you register in Scotland you need to have a Scottish address when you start, after that it can be a letter box and you can be completely abroad or you could change it, so, yes, there are concerns.

I come back to the point that we might be able to minimise the risks and we should not be too concerned even if that is correct, but it does seem that one or two risks eventuating would be a very serious problem, both for the people involved and the reputation of the particular business vehicle.

Q36 **Chair:** Gwyneth, do you want to come back on that?

Gwyneth Nurse: All I was going to say is obviously there may be wider issues with limited partnerships, but with this Legislative Reform Order, the changes that are being made here are not necessarily on point there. The domicile of the individuals is not listed now, so we are not making changes to those particular points. I just wanted to add that.

Q37 **Chair:** Elspeth, do you have any concerns about the content of the white list and the implications of having a list as such?

Elspeth Berry: Yes, I do.

Q38 **Chair:** Would you like to expand on that for the Committee's benefit?

Elspeth Berry: The idea of having something in principle has some merit, in order to clarify what is and what is not management, but I do notice that the Chancery Bar, which has considerable expertise in this area, are very much against that proposal. They thought that the law, in so far as it can be clear, was sufficiently clear at the moment. I have that at the back of my mind, although my gut reaction was that a list in principle was a good idea. However, there are a number of things on this list that look to me more like management than defining things that are not management.

Sitting suspended for a Division in the House.



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On resuming—

Q39 **Chair:** Gwyneth, it is quite interesting that, in previous evidence sessions and again in this one, it is basically agreed that there is only nominal capital in the current limited liability partnerships, and obviously there will be a reduced capital requirement for the new structure. If that is the case, and it has been mentioned on repeated occasions, why do we need transitional measures if there is nothing to protect anyway?

Gwyneth Nurse: I had also asked that question. Basically, some concerns were expressed through the consultation, so the decision was taken just to put the matter beyond doubt, I suppose, so a belt-and-braces approach.

Q40 **Chair:** If there happened to be some capital, it would be protected.

Gwyneth Nurse: Yes.

Q41 **Chair:** However, you believe that that is not the case anyway.

Gwyneth Nurse: Yes.

Chair: Okay, belt and braces.

Q42 **Roger Mullin:** Just before I ask the questions we are going to ask, could I ask Gwyneth to respond to something that has just happened on the floor of the House to the Criminal Finances Bill? The Minister has said that the consultation that we have been discussing is going to take place will supersede anything that happens here. Do you see that as having any change in your view of matters?

Gwyneth Nurse: I guess it would always have if there is something that applies to all limited partnerships. That is what I was alluding to at the beginning. That would come into effect for these particular private fund limited partnerships as well, so if there is a wider problem that would be addressed. That is consistent with the position that we have taken to date. Obviously, I have not seen what the Minister himself has said.

Q43 **Roger Mullin:** No, I understand that. Given that a private fund limited partnership can be a feeder fund for other financial vehicles, why are the Government proposing to remove the requirement to register the general nature of the business?

Gwyneth Nurse: We addressed this in our written response. Basically, the position is that the Government's view is if the business were to be designated as a private fund limited partnership, so it says clearly it is a private fund limited partnership; its intended use would be clear to any third party. We think the descriptions provided at registration tend to be general, they do not give much more information than the designation itself, so we think that by stating it is a private fund limited partnership that provides all the information that is needed.

Q44 **Roger Mullin:** Does that mean you are disagreeing with those who would argue that registration of the terms of the partnership is arguably



helpful to creditors and investors? You are arguing that it is of no help to them.

Gwyneth Nurse: All I can say is through our consultation that was the feedback we received in the main, so that was the decision that was taken, yes.

Q45 **Chair:** Elspeth, the list of permitted activities in section 6A(2) of the order appears very comprehensive. Do you have any concerns over this list giving a limited partner carte blanche to participate in management activities, which would then jeopardise their limited liability status?

Elspeth Berry: I presume the way it is worded means that they can take part in these things without losing their limited liability status. Some of these, at least as I understand it, look pretty much like management. This is saying there is not a problem, but some of them look like management and it is not just me who says this; a lot of people responded not just to the consultation at this stage but the earlier one on which a lot of this work is presumably based. It was looking at applying this to all limited partnerships. Many of these things were in those same proposals, like this idea of this white list or safe harbour list. Some of them, I imagine, have been borrowed from the American legislation, because they look fairly similar.

There are things on that that I think are really management, and if we want limited partners to be able to do that, then that is quite a big change to the nature of a limited partnership and to really what is the trade-off when you have limited liability, which is vanishingly small if you have not made a capital contribution or it is nominal, you have limited liability to a very tiny amount, but you cannot engage in management. Now some of these, to me, seem to be that you can engage in management if you are, for example, taking part in a decision about the acquisition or disposal of a type of investment. Well, if it is an investment business, is that not a business management decision?

Q46 **Chair:** Gwyneth, on the permitted items on the white list for a private fund limited partnership, if a limited partner in a conventional partnership participated in those activities would that contravene their limited liability status, do you believe?

Gwyneth Nurse: The position is that we have sought to clarify for the particular investment vehicles that we are looking at, so as part of the consultation we looked closely at how they worked. In the private fund limited partnership world, all we are trying to do is give certainty to limited partners that regarding the sort of activities that are proper to investors to one of these private fund limited partnerships, if they undertake that activity it does not then risk them becoming part of the management. It is not our intention to change that line. The intention of the white list is simply to clarify the position to avoid people taking costly legal advice that this crosses the line. We do think that, in the instance that Elspeth has stated, it is proper for an investor into one of these



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partnerships to be able to attend a meeting about the investment and, indeed, be involved in the decision-making process.

Q47 **Chair:** Is it your contention then that the white list is merely formalising activities that you believe limited liability partners are already undertaking, but you are merely formalising it so there is clarity?

Gwyneth Nurse: Yes, that is correct. That is what we believe it will do, yes.

Q48 **Chair:** Elspeth, what is your view of that?

Elspeth Berry: I am not saying that limited partners are not doing these things and, of course, if the partnership is successful and does not become insolvent then no issue arises. I honestly do not know to what extent partners currently are doing these things, but, as I say, I think—and I am not the only one of the respondents to the consultation who thought this—that a number of those things are not simply clarifying the edges and saying, “This is quite clearly management and we are just reassuring you” or rather “This is clearly not management”, but they are taking something that really starts to look like management and saying, “Ah, well, we are going to say this is not management and therefore you are okay if you do this”.

It is the price of limited liability that you cannot engage in management. If you want to have a more active role in investment—personally, I would, if I was trusting large money and I knew about it—then you can be a general partner or you can set up some other kind of business, but if you want that limited liability then the price, quite clearly stated in the Limited Partnerships Act, is you do not engage in management, and I think some of these activities do amount to management.

Q49 **Rob Marris:** Is that moving the line between being a passive investor and being an active investor? You think it is moving that line; is that right?

Elspeth Berry: Yes.

Rob Marris: That is helpful. Thank you.

Chair: Gwyneth would maintain that this is already occurring.

Gwyneth Nurse: Yes.

Rob Marris: I understand that.

Q50 **Chair:** And this is a very sophisticated vehicle for a sophisticated market. Elspeth, do you have any other concerns over the draft order that we have not discussed in detail during this session?

Elspeth Berry: On the list or generally?

Chair: Generally

Elspeth Berry: I think there was, but I have forgotten what it is.



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Chair: In that case, it will remain a mystery.

Rob Marris: Chair, we have some more questions, so we can perhaps come back when Ms Berry has had a chance to look at her notes.

Elsbeth Berry: In fact, I have found it. It is something that you had asked the Treasury on section 4(2)(b), the paragraph wording: “the amount of the partnership property which is available to the general partners to meet such debts or obligations”. I understand from the Treasury that it comes from other financial legislation and is copied over. In the clarification, it says that would mean that if a limited partner had invested capital then that capital would then be available to creditors. It does not say what happens if the partners have left in a profit share, so what with other kinds of partnerships you would say are undrawn profits. I am not sure how they would be described in this kind of business, but as I understand, it is not intended to deal with that.

However, it seems to me that that leaves it unclear. If you are an outside creditor and you want to know what would be available to you, any capital that is there is apparently available, because of the Treasury’s explanation, but that is not necessarily clear from 4(2)(b), which is, no doubt, fine for limited partners and general partners with all their sophistication. However, if you are an outside creditor, it would not be clear to me and then there is the issue of whether it includes these undrawn profits, which could be, realistically, quite a lot of money, whereas there is almost no capital in most cases, perhaps, but there are these undrawn profits. Are they then available, so, in effect, a limited partner does have liability in the way they traditionally have done for any capital contribution? Do they have liability for any undrawn profits that can be taken away from them, or can they say, “That is ours. That is not the amount of partnership property that is available to the general partners”?

Q51 **Chair:** Gwyneth, can you shed any light on that issue?

Gwyneth Nurse: I can try. It does go into some of the real technicalities of this order. Generally, our understanding through our consultation process is that the creditors of these private fund limited partnerships that we are seeking to establish the new rules for are entirely comfortable with dealing with a situation where there is only nominal capital there. In fact, they are not looking for capital or anything else in order to make sure that they are going to get repaid. They look at a variety of other indications through the limited partnership.

Q52 **Chair:** I am supposing that—perhaps you could clarify this—it is unlikely that any of these funds are going to have any unsophisticated creditors at the end of the day.

Gwyneth Nurse: Indeed. The bank may be looking at it, but I think we can put that in the category of “sophisticated”.

Q53 **Rob Marris:** Forgive my ignorance, but who are these creditors? Is it



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somebody supplying office equipment or what?

Gwyneth Nurse: It could be a bank that they are going to seek a loan from. They can look after themselves.

Elsbeth Berry: This is only really going to come into play if it is insolvent, but then it could be employees or it could be trade creditors. It might be people who, relative to the limited partner investor, are small potatoes, but to those people themselves that will not be the case.

Q54 **Chair:** Under the current structures they are still going to have very limited claim on any monies, because it is such a small amount of capital in there.

Elsbeth Berry: Yes.

Q55 **Jeremy Quin:** My friend, Mr Mullin, is not always right but he is always interesting, and he has been pursuing with dogged determination this question of anonymity and the registration not being apparent as to who are the partners behind these vehicles. I am sorry if I am going back over old ground, but just to reassure me, do you see this as a potential route in for unsavoury characters? I know the consultation will have gone to perfectly respectable, perfectly decent investment managers. Those are not the people we are worrying about, they are not the people you are worrying about either. Do you think we could be accidentally opening up a problem here?

Gwyneth Nurse: I have no reason to believe that is the case, from the work we have done on this since 2013, through the consultation responses. As you say, the people you are talking about would not be responding to our consultation anyway, but there is nothing that I have seen in this that leads me to believe that this particular set of changes will open that up more than the opportunity is already open to that.

Q56 **Jeremy Quin:** At the moment one is required to register, but one would not be required to register post the order.

Gwyneth Nurse: We are making some limited changes to the registration, but we are certainly not making a change that you do not need to say where you are domiciled, for instance. My understanding is that does not apply today.

Q57 **Rob Marris:** On that, Ms Nurse, you said you were fairly confident, on the basis of the information you have, that these changes would not open these vehicles up to rogues. Can we, again, flip that around the other way? Do these changes do anything to clamp down on rogues, given that Roger Mullin has been producing some evidence about rogues exploiting these vehicles for a while? It is a tiny minority, I am sure. Are the changes going to do anything to clamp down?

Gwyneth Nurse: They are definitely not going to clamp down. They are, by their nature, deregulatory and the Government think appropriate



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for a Legislative Reform Order. We would not be doing clamping down through this method.

Q58 **Rob Marris:** It would be done through a different manner.

Gwyneth Nurse: Yes, exactly. So no, it does not do anything to clamp down.

Q59 **Chair:** Are there any other questions from the Members? We have four very detailed and technical questions, which I had proposed that the Committee were going to give orally to you. Now, having taken counsel's advice, I would advise the Committee we are thinking of putting them in writing to the Treasury. Time is pressing and although you have not seen the questions, we could give you a copy to take away with you and, obviously, we would like a rapid response to them, preferably by the end of the week.

Gwyneth Nurse: I see no reason why we cannot do that. I have not seen the questions.

Chair: You are the sort of civil servant I dream of.

Rob Marris: Can we perhaps show Ms Nurse the questions? I suspect she can answer them by the end of the week, but it is not for me to say. Before you give that assurance you might like to glance at the questions.

Gwyneth Nurse: Okay, I will look at the questions.

Chair: Do we have a spare copy of the questions?

Gwyneth Nurse: They look highly technical, but—

Chair: You have some very highly technical people in your Department.

Gwyneth Nurse: I have very highly technical people looking at this. We should be able to address the questions to the timescale you suggest.

Chair: That would be excellent. In which case, ladies, thank you very much for your appearance before the Committee today, and you may leave.