

Elsbeth BERRY: The tortoise and the hare: partnership alternatives to the company

This research suggests that the significantly greater quantity of legislative, academic and policy output devoted to the private limited company as opposed to partnership alternatives has led to two significant problems.

First, businesses – and law students - might be forgiven for thinking that the company is the only, or at least unarguably the best, choice of business organisation, whereas in fact this is not the case. The general partnership offers simplicity, flexibility and privacy; the limited partnership (and increasingly the LLP) offers advantages as an investment vehicle, and for family and farming partnerships desiring protection from unlimited liability while maintaining the advantages of general partnership; and the LLP offers limited liability while retaining the tax transparency and at least some of the flexibility and privacy of its counterparts.

Second, policymaking and legislative attention has been diverted, with the result that legislation governing the older forms of partnership has not been modernised (for example, to provide for continuity when partners leave), and key questions arising from the largely untested LLP legislation have not been resolved (for example, whether duties are owed to other members), despite evidence of demand, leading to difficulties for businesses and the courts.

This poster will summarise the results of the research; principally the key features of each type of partnership, a critical evaluation of the relative advantages and disadvantages of each, and suggested improvements that legislators and policymakers should make. It will conclude by assessing the distinctive role which each plays in supporting UK businesses.