

Another door closes on LLP members' rights

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My clients have often been surprised by how few rights they had as LLP members but delighted when I mentioned the most powerful weapon in the aggrieved partners' armoury. Last week, however, the High Court inspected that weapon for the first time and concluded it did not work. I have written in this blog before about the so-called '*nuclear option*' for disgruntled members of an LLP. This is the idea that, if your fellow partners treat you sufficiently badly, you can say that they have '*repudiated*' the LLP Agreement, which will fall away to be replaced by the '*default regime*' under the LLP Regulations 2001. This is particularly attractive to junior partners because, amongst other things, it provides for profits to be distributed equally and contains no post-termination restrictions. I have threatened the nuclear option against a number of City law firms and favourable settlements for my clients have usually followed quickly. Alas, in the case of *Flanagan v Liontrust Investment Partners LLP*, handed down on Friday, the High Court held that this '*nuclear option*' doesn't work: it's not an option at all and (unless there is a successful appeal) several LLP legal text books will have to be rewritten. What now for the aggrieved partner? We already know that, unlike employees, members of LLPs cannot claim '*constructive dismissal*' and walk out in response to a breach expecting to be compensated. In Mr Flanagan's case, the Court held that attempts to expel him from Liontrust in breach of the LLP Agreement in August 2012 had been ineffective and so he remained a member of the LLP in 2015, entitled to almost three year's back pay. While this must have been some consolation, under the nuclear option he would have received much more. Mr Flanagan's claim was brought under section 994 of the Companies Act, commonly known as an '*unfair prejudice claim*', in which claimants petition the Court to order that they be bought out of a company or LLP at a fair value. Mr Flanagan was not granted such an order. In any event, most LLP agreements expressly exclude the right to bring s994 claims. A disgruntled member can always apply to the Court for a '*just and equitable winding up*' of the LLP, although the judge in Flanagan stressed that this was '*to be regarded as very much a last resort*'. Members of LLPs are able to bring discrimination and whistleblowing claims but not all unfair treatment falls neatly into these categories (despite frequent, valiant attempts to shoehorn it in). The theme of this blog over the years has very much been, if you join an LLP you won't have many rights. This appears to be more true now than we had previously appreciated. The best advice is always: negotiate a decent deal for yourself at the outset. Unfortunately, most simply do not have the bargaining power to do so and those that do are often disinclined to bargain, a decision that many regret when they are expelled without compensation or recourse.