HOUSE OF COMMONS

Foreign Affairs Committee

Oral evidence: Global Britain: the future of UK sanctions policy, HC 1703

Tuesday 2 April 2019

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Watch the meeting

Members present: Tom Tugendhat (Chair); Chris Bryant; Stephen Gethins; Conor McGinn; Ian Murray; Priti Patel; Mr Bob Seely; Royston Smith; Catherine West.

Questions 362 - 400

Witness

I: Maya Lester QC, Brick Court Chambers.

Written evidence from witness:

– europeansanctions.com

Examination of witness

Witness: Maya Lester.

Chair: Welcome, Maya Lester. Thank you very much indeed for coming to see the Foreign Affairs Committee this afternoon. We are going to go straight away to Chris Bryant, who is going to ask the first question.

Q362 **Chris Bryant:** Thanks very much for coming today. Quite a lot of evidence has been given to us by Government Ministers and by the Foreign Office about what we can and cannot do in terms of sanctions policy while we are a member of the EU, which seems to conflict a little bit. Could you just tell us what we can and cannot do?

Maya Lester: Some of the reason why there may have been conflicting evidence is that it is actually quite a difficult question as a matter of EU law. Because we have the Sanctions Act, it is now quite clear as a matter of UK law what the domestic powers are.

I suspect that where there is a bit of room for doubt is that some lawyers would say—and there is no judgment that helps us on this—that because the EU has always conducted sanctions policy, that is now a competence of the EU; it is something that the EU does and that member states cannot do. However, I think that, when it is expressed that broadly, it is a bit confusing. Really, the question is going to be whether, for example, there are any asset-freezing provisions. I know the Committee has been particularly interested in the human rights abuse Magnitsky sanctions, for example.

Are there any sanctions that the UK could impose that the EU has not? My view is that if, for example, the EU has decided on the limits of sanctions on a particular country, and one of the EU member states were to impose unilateral sanctions in a way that conflicted with that regime, then there would be a problem, because we are bound by EU law, and we can't do anything that conflicts with it.

You have seen my opinion on Magnitsky; if we were to add people to a sanctions list where the EU did not have sanctions of its own, then it is arguable at least that there would not be a problem in EU or UK law terms. But I should say that I am not aware of any clear view being expressed by the Government on that, and I suspect there is room for disagreement.

Q363 **Chris Bryant:** They seem to have told us that we can only impose sanctions that have been agreed by the EU and no others, but we imposed financial sanctions on Iran, when the EU had not in the past.

Maya Lester: But that was before the EU had imposed sanctions on Iran. There used to be—if you are thinking of the Bank Mellat example—Orders in Council, where the UK decided on certain measures that were taken under the aegis of counter-terrorism and nuclear proliferation. Counter-terrorism is an example of sanctions; if they are called sanctions, they are an example of asset freezing that has always been a competence of

member states. That is clearly something the UK can do—impose terrorist asset freezing.

Under the aegis of terrorism and nuclear proliferation, the UK was engaged in what you could call sanctioning Iranian banks, before the EU had a sanctions regime. As soon as the EU imposed sanctions on Iran, the UK and all other member states took the view that we are part of the common foreign security policy, and we would not, or would not be allowed to, do anything that would cut across EU policy.

Other than in the area of terrorist asset freezing, which is specifically a member state matter, no member state to my knowledge has done anything that could be regarded as its own unilateral sanctioning. That is for both legal and policy reasons. Member states have taken the view that sanctions are more effective when they are imposed multilaterally, and that stepping out of line is not necessarily in the interests of a joined-up sanctions policy.

Q364 **Chris Bryant:** Okay, but do the Sanctions and Anti-Money Laundering Act 2018 provisions have to wait until we are not a member of the EU?

Maya Lester: No, and that is what my opinion says. Most of the Sanctions Act is already in force in any event. The Act, on its own terms, does not depend on us leaving the EU to be operational, but all of the UK legislation that the FCO has been busily laying before Parliament, and which is now almost all in place, is there only for the circumstance in which we are no longer a member state. All the ground work under the operational parts of the Act has already been put in place to prepare us for no longer being a member state, but the actual imposition of those sanctions has not occurred yet—that has not come into force. It is certainly not the case, and I would be surprised if the Government said otherwise, that we can't undertake any actions under the Sanctions Act yet.

Q365 **Chris Bryant:** Well, that is effectively what they have told us repeatedly, both in the Chamber and here.

Maya Lester: Are they are talking about substantive new listings, designations of people, actual asset-freezing measures and other kinds of sanctions? That's different. What they have been doing is laying the ground work for us not being a member state. All the legal measures that they have to put in place have been put in place in preparation. What they have not yet done is any unilateral sanctions policy, because it is certainly their view that that won't happen until we are not a member state any more.

Q366 **Chris Bryant:** Won't happen or can't happen?

Maya Lester: You will have to ask them their legal position on that.

Q367 **Chris Bryant:** Estonia has its own list already.

Maya Lester: Are you talking about Magnitsky? Is this its human rights actions?

Chris Bryant: Yes.

Maya Lester: The EU doesn't have a sanctions regime. It may have one in the future, and there is talk of it having one. The EU does not currently have a sanctions regime that is called "sanctions imposed for gross human rights violations". That said, it does an awful lot of sanctioning on that basis, because it does so under the headings of the different country regimes. There is a sanctions regime relating to Iran that is nothing to do with the nuclear deal; it is for Iranian human rights violations. There was a sanctions regime formerly for Zimbabwe, which is expressly based on human rights violations, and so on. The EU does that quite happily without having a regime that is addressed to human rights violations.

The only difference the sanctions you are talking about would have is that they would permit people and companies to be designated where they are not connected with a particular country or regime that is subject to sanctions. An example would be that the EU has recently enacted a chemical weapons regime, which, again, is unconnected to any particular country, so it could be used for Syria, Russia or for anywhere where there are chemical weapons-related violations.

The same could be done for human rights abuses anywhere in the world unconnected with any sanctions regime and that would take the form of an asset-freezing measure. Human rights sanctions unconnected with a regime are not something the EU has yet done. The UK has the power to do that in the Sanctions Act, in exactly the same way as it has the power to impose sanctions for a huge number of different and very broadly expressed goals—any foreign policy goal. There is, under section 1 of the Act, the power to enact sanctions for national security reasons, foreign policy reasons and gross violation of human rights reasons. It is those that I think the Committee is interested in, and it is those that have not yet been imposed here.

Q368 **Chris Bryant:** But Estonia has a list of 49 individuals, all of whom are from Russia; Lithuania has 66, 49 of which are from Russia, and 17 of which are from Saudi Arabia; and Latvia has listed the same 49 individuals from Russia.

Maya Lester: I should come on to that. They are, indeed, taking the view that there is nothing stopping an individual member state from imposing sanctions unconnected with the regime for human rights abuses—in colloquial terms, from having their own Magnitsky list, even when the EU does not have one. My joint legal opinion, which you have seen, is that there is nothing legally stopping us from doing that either. My understanding, but I might be wrong about this, is that the Foreign and Commonwealth Office do not disagree with that, but you will have to ask them. My understanding is that what they have been doing, commendably and very rapidly, I have to say, is enacting the very large—and I am demonstrating the number of regulations that they have had to put in place—

Chris Bryant: The secondary legislation.

Maya Lester: The secondary legislation, exactly, to prepare for Brexit. They have reviewed around 1,000 designations of people and companies to decide whether those will become UK designations, should the need arise, and I don't understand there to be a principled or legal objection to starting to have UK listings, even if we are still a member state. Provided they do not conflict with EU law, my understanding—but you will have to ask them—is that the Foreign Office would not take the view that they couldn't do that. They are simply working to a deadline, albeit a slightly more relaxed one, and preparing the groundwork first for everything that absolutely has to be done. They will then come on to considering making designations of their own. My guess is that they are quite close to being in a position to do that now.

Q369 **Chris Bryant:** So if we were to leave on 12 April, would they be ready?

Maya Lester: Ask them that question, but my understanding is yes, they would. I think they have said this publicly: the regulations that have already been laid are all of the major regimes other than three. Those three, which are Syria, Russia and Libya, are coming, probably in the next few days. As for the remaining regimes, I saw the figure of 30, but there are a lot of them that are implementations of United Nations regimes, so those are slightly different. They will come at some point in the summer, but those are not the sort of urgent pre-Brexit regimes. My understanding is that they are ready and they have done everything, both in terms of the secondary legislation required and in terms of reviewing the evidence for the designations, that is needed to prepare for a no-deal scenario.

Q370 **Chris Bryant:** Just to completely tidy this off—I am sorry if this feels repetitive, but it does get a bit confused—let us say for the sake of argument that either there is a long extension or Theresa May's deal goes through, so we have an even longer period of transition. Is it your view that we could do the same as Estonia in relation to the Magnitsky provisions?

Maya Lester: Now? Yes.

Q371 **Chris Bryant:** Which is directly the opposite of what the Foreign Office have said.

Maya Lester: All I would say is that when you hear oral evidence from the Foreign Office, I do not know what they will say, but I would be surprised if their view were that it is legally impossible for them to do that before we are no longer a member state. Obviously I cannot speak for them.

Q372 **Chris Bryant:** It is what the Foreign Secretary has said in the Chamber and here.

Maya Lester: Recently?

Chair: In the last few months.

Q373 **Mr Seely:** My apologies—I am listening, but I still do not quite understand. To follow up on Chris's questions, why are the Foreign Office

saying that, when—as Chris points out—they have repeatedly told us that membership of the European Union is preventing them from doing that? Why is their interpretation of the law different from yours? You are saying that it is possible, and they are saying that it is not possible.

Maya Lester: I said, and I think this is right, that there may be room for two respectable legal views. One is that the EU has taken responsibility—competence, in EU law terms—for the whole of sanctions policy. Writ large, that would suggest—I do not know whether this is the Government's view, but it may be the view of some member states—that there is absolutely nothing that they can do to impose any sort of asset-freezing without it conflicting with EU law.

I have to say that I have not thought about this, but my off-the-cuff reaction is that that would be going quite far. It would be a bit surprising, because we do plenty of asset-freezing as a member state—with criminals, for instance. That is obviously a restriction on the freedom to conduct business, but no one would suggest that it breaches EU law. To my mind, the idea of freezing the assets of individuals if they satisfy the test of gross violations of human rights does not cut across anything that the EU currently does. It could be that the Foreign Office have taken advice on this and take a different view.

Q374 **Mr Seely:** So do we think that there is some politics involved here? Is there some foot-dragging on their part?

Maya Lester: I have no idea. You will have to see what they say about this, but my understanding is that at this stage there is not a principled objection to beginning these designations now. It has simply been a question of time pressure—they have prioritised doing what they have to do in a very compressed time period to prepare for a potential no-deal scenario, but they will come on to this. My understanding of the Foreign Office's position is different from the Committee's, so it might be useful to clarify with them whether their view now is that they simply cannot do this, or whether they have not had time to do it.

Mr Seely: They did not give any sort of proviso like that. They did not give any caveat such as, "Well, we could do it, but we're really busy at the moment."

Chair: Bob, can we get back to the questions, please?

Q375 **Priti Patel:** I would like to ask you about the Sanctions and Anti-Money Laundering Act, as it stands, and in particular to gauge your views on its strengths and weaknesses. We have already touched on the EU sanctions framework; are there any ways in which the current Act can help to improve it?

Maya Lester: There are a number of strengths and weaknesses in the Act, in my view. First, it broadly does exactly what it is designed to, which is to give us the power to enact sanctions ourselves in circumstances in which we could not have done before. One of its strengths is that it requires guidance to be issued on the operation, enforcement and

meaning of sanctions provisions. That is key, because—as I think you have heard from some witnesses—at the moment there is very little by way of guidance on what sanctions measures mean. A lot of sanctions provisions are extremely difficult to interpret and there is a lot of room for doubt. As you can imagine, that creates havoc for businesses, because the cost of complying with sanctions is often extremely high and it can be extremely complex. So the guidance is one strength—it is in section 43.

Secondly, the ability for the Treasury to provide exceptions to asset-freezing measures—what are known as licences—is a lot more flexible than under the EU sanctions regime. At the moment you have to write to the national authority for the Treasury. For example, if you are a lawyer conducting a case on behalf of somebody who is subject to sanctions and you want to apply for a licence so that funds for legal fees can be paid, you write. One of the headings that is permissible for a licence is legal services, so that is not a problem. However, for a lot of businesses who want to be able to conduct legitimate business, but which do not come within one of the particular, rather narrow licensing grounds, there is simply no power to license at the moment.

The Act gives much broader and more flexible powers, including the ability to enact what the US calls general licences. That means that if there are whole categories of conduct that are okay and permissible, the Government will now start to be able to issue general licences. That is a plus.

In my view, it is also a plus that it is an express requirement that sanctions be proportionate. In the language of the Act, every time the Government consider whether to impose an asset-freezing measure or other sanction, they have to have express regard to whether it is appropriate to do so, having regard both to the purpose of the sanctions measure and to the likely effect on the individual. That is also a requirement of EU law, but it is not one that has been expressed as overtly as that and it is not one that the European Court has been terribly interested in, to use colloquial language. The court takes the view, rightly or wrongly, that almost anything is going to be proportionate given the importance that all these regimes have.

I have seen a number of cases where it is difficult, with respect, to see why it is appropriate—or useful even—to impose sanctions on a particular individual, given whatever the purpose of the sanctions measure is trying to achieve. That in itself is often not very clearly stated; you have heard that point from other witnesses. The purpose of the measure is not very clear. Nor is it clear in that list how most individual companies are going to serve that purpose and still less whether—given the impact on their business, which could be devastating—it is appropriate. There is an express duty in the Act not only to have regard to proportionality at one time, but that all of this appropriateness analysis will have to be conducted every year.

That brings me to the final strength, if you like, which is the role of Parliament and the role of parliamentary Committees. In sections 2 and 30

of the Act, every time a new sanctions regime is designed and enacted, and every year after that, there is a reporting obligation on Ministers to lay reports to Parliament to show what the purpose of the regime is and why sanctions are a reasonable course of action in order to achieve that purpose.

As you know, parliamentary Committees have already played quite an important role in scrutinising sanctions, including the Lords EU Committee, but others as well. As least for my part, I think that is crucial. The reason is that sanctions are very easy to impose. The threshold for their imposition is extremely low in evidential terms. That may be right or that may be wrong, and we can come on to that, but they are regarded not as law enforcement but as foreign policy measures—which of course they are—and as being put in place for some preventative purpose. I have never understood how they are preventative, because they are not actually preventing anything, other than in the case of terrorist asset freezing. They are put in place for conduct that has already occurred or because of someone's position in a company, for example. The point is that they are very easy to impose.

When it comes to the courts reviewing these measures, the courts will say, "Well, this is foreign policy. It is not the role of a judge to get really involved in these decisions about whether it's appropriate or proportionate to impose; that is for Ministers." Again, that may be right or wrong, but the effect of it is that there is remarkably little scrutiny given to the appropriateness of sanctions in any particular context. That goes both for the regime as a whole—is this a useful purpose?—and for the appropriateness of each individual designation. If it is the case that a Select Committee of Parliament role will be more active in that steer, it could play a very important part.

Select Committees have also sometimes played a part when it comes to quite detailed scrutiny of the evidential basis for designations. The Lords EU Committee, for example, got interested in one of the practices of the EU.

That actually brings me on to weaknesses in the Act. One of the weaknesses, in my view, is that it does not prevent a practice that the EU has engaged in. If the European Court has decided that a person or a company should not be on a sanctions list because there is no evidential foundation for their listing, the EU, in response, has re-listed the very next day that person who won their case, sometimes relying on exactly the same evidence on which it relied before, or on evidence that it could have mentioned in the first listing.

That is a practice that I have always thought incompatible with the rule of law. The European Court has not agreed with me and has upheld that practice as being lawful. I think the Act could have taken the opportunity to say that that is not something that the UK will do as and when we have UK sanctions.

That brings me to another weakness of the Act, which is the grounds for designating someone to freeze all their assets and prevent their travel across the whole of the EU—very far-reaching measures. If there are reasonable grounds to suspect that an individual has either engaged in the conduct alleged by a particular regime or is, for example, associated with a Government or whatever the relevant language of the regime is, reasonable grounds to suspect—they also have to be appropriate and proportionate—are the legal grounds used in the Act.

That is a threshold. Whether that is a low threshold will depend on how it is applied in practice and on what level of evidence the courts will require. My hope is that the courts will read that phrase as requiring quite a robust standard of evidence. The danger with targeted sanctions of this kind is that they pursue the very commendable purpose that targeted sanctions target rather than being far-reaching trade prohibitions. They are often imposed—and this is a weakness of the EU and US systems—on the basis of an absolutely unsubstantiated allegation read in a press report.

They are very easy to impose, because they are the foreign policy tool of choice at the moment. I have seen the European counsel in court, with an iPad, googling an individual and saying, "Come on, court; look at this. This says that he has done x." That, to me—and, I hope, to the High Court—is not evidence. That is mere allegation. The phrase "reasonable grounds to suspect" could allow, in principle, somebody to effectively have a lifelong designation that wipes out their business, reputation and family life on the basis of a suspicion. That is why, as I said earlier, you then get into the problem of the degree to which a court is actually going to scrutinise that level.

There was a much higher evidential threshold in the Terrorist Asset-Freezing etc. Act 2010, which this piece of legislation—the Sanctions Act—will repeal and replace. When it comes to terrorist asset freezing, the Act has lowered the evidential standards to "reasonable grounds to suspect". It is also a threshold that has been criticised in a number of different contexts by the Joint Committee on Human Rights and by a former Independent Reviewer of Terrorism Legislation, Lord Anderson. The threshold is in place, but the only reason that I am considering it a weakness is that it does not necessarily expressly require there to be robust evidence, but my hope is that when the Government implement it and when the courts scrutinise it, that they will require there to be rigorous evidence in place.

Q376 **Priti Patel:** Thank you for that very thorough analysis. You have covered so much ground, both on strengths and weaknesses, and also on the whole issue of robust evidence and the evidential base. Obviously, that will be a challenge for the Government in future, in terms of the implementation. Do you think that there are any other lessons or countries around the world where the UK can improve—particularly post Brexit—both the sanctions regime and some of the thresholds that you have just identified?

Maya Lester: Can I just make sure that I understand the question? How would the UK be improving other regimes?

Q377 **Priti Patel:** No. Are there any other jurisdictions around the world—some good examples, perhaps—that the UK can follow?

Maya Lester: I see. Not that I am aware of. I know that the Canadian Supreme Court has criticised that low threshold. The EU, in my view, is guilty of sometimes listing individuals—they have probably got better—but sometimes they list individuals on the basis of relatively flimsy evidence. The United States sometimes does so on the basis of mere suspicion, and it is even more the case that the courts there are extremely deferential to decisions by the Government in this field, and therefore offer no real scrutiny. I am not aware of any regime in which there is a more robust evidential approach. It could be that some unilateral regimes have a more robust approach, but my guess is that this is seen as foreign policy and not as law enforcement.

In the context of this new legislation, it is true that the Government have worked very hard to work on robust open-source material that can be shared with designated parties. In the process of the Foreign Office's reviewing roughly 1,000 designations in the Brexit context, they will have been checking whether these statutory tests have been met, and to what degree the evidence is robust. In the case of around 30 or so listings that the EU had designated—I cannot remember how many—the UK has decided not to make those UK listings, precisely because they do not have sufficient evidential foundations. At least the Government is turning its mind to the question of the robustness of evidence. You could say that various different pieces of terrorist legislation provide a more robust model simply because the tests have been higher, but I am not aware of a leading regime in that respect.

If I could mention three more—I promise to be brief—weaknesses of the Sanctions and Anti-Money Laundering Act 2018. One is section 31, which carries over to the Act the role of the independent reviewer of terrorist legislation, but only in the context of terrorist asset freezing. As at the moment, the independent reviewer of terrorist legislation has the role of reviewing the operation of terrorist asset freezing. That role has not been extended to any of the other sanctions lists, which means that there will be a more robust review process for the operation of the Act when it comes to terrorism than any of the other sanctions lists. That is also taken from the United Nations position, in which there is some review of the evidential sufficiency of designations, but only for the terrorist list. If you are on a United Nations sanctions list, which means that you have your assets frozen and cannot travel throughout all 200 countries in the UN, there is no level of due process. The same has been implemented in terms of independent review here, which is a shame.

That brings me to United Nations listings. I do not know whether any of your witnesses have drawn this to your attention. In my view, a weakness of the Act is section 25. If you are subject to a United Nations listing, which is the basis for the UK listing, and a court in the United Kingdom

were to find that that listing was procedurally unfair—for example, if you were given no reasons for your listing, or if it lacked all evidential foundation—the UK court would be prevented by the Act from deleting your designation and quashing it. That might be for sound legal reasons, because the Government takes the view that international law requires it to implement UN designations, come what may. This is obviously a controversial topic. I will simply say that, first of all, the EU court has taken the view that the rule of law in the European Union requires there to be basic fairness and for listings to be quashed, even when it is the United Nations saying that you must list. The speeches of Lord Pannick during the passage of the Sanctions and Anti-Money Laundering Act 2018 have drawn attention to the unfortunate consequence that there is a serious rowing back of the rights of individuals who are UN-listed in the Act, compared with the position under EU law.

Finally, the basis for each listing under the Act will be reviewed every three years. The EU law position is that those listings get reviewed every year. To my mind, if there is not sufficient basis for it, there should be a review of the proportionality and appropriateness of somebody's being on an asset freeze list more frequently than every three years. However, I know that it is a difficult area, because the Government have the task of going through a very large number of reviews.

Chair: Ms Lester, I am going to ask you to be somewhat briefer in your answers. However, you are being extremely useful and very helpful; it is not a criticism.

Q378 **Ian Murray:** The Prime Minister said that the EU sanctions regime would just be rolled over into UK law following our exit from the European Union. I am interested in your views on where the UK should stay closely aligned to the EU sanctions regime, and where, potentially—you have touched on some of this already—it should maybe go further or diverge from it, perhaps in places such as financial services.

Maya Lester: I won't say much about that because I am not a policy person; I am simply a lawyer. Obviously it will depend on the UK's foreign policy from time to time, and the UK will now have that flexibility. All I will say is that most commentators on sanctions remark that they are obviously more effective when they are aligned with other countries, and that an EU-wide asset freezing measure, for example, will be more effective than a UK-wide one.

There may well be instances where the Government deem it appropriate to go further, but there is no particular area that I am aware of the UK Government contemplating going further or where, in my view, that would be obviously appropriate. However, I think that is very much for policy people going forward.

Q379 **Ian Murray:** Similarly—you may have a similar answer—the UK has obviously driven a lot of the EU sanctions policy, particularly with regards to Russia. Do you think that the EU might row back if it does not have the influence of the UK within its sanction regime?

Maya Lester: I think the EU will feel very keenly the absence of the UK if there were no UK involvement in sanctions decision making. Obviously, the foreign policy and security policy relationship between the EU and the UK has not yet been worked out. What will be worked out—it is no doubt being discussed already—and the extent to which the UK can feed into the sanctions debate, both on designing sanctions and proposing designations, will be absolutely key to answering your question. If there were no UK involvement at all and no other member state took on the very active role that the UK has had in sanctions policy, the EU would no doubt feel the loss. However, my guess is that something will be worked out to permit at least some sort of relationship between the two.

Q380 **Mr Seely:** I want to ask more general questions to follow up on the line of questioning outlined by Priti. Clearly sanctions have a moral purpose and a political purpose, but from a legal point of view—I am not talking about law—there is no strong legal basis for sanctions, is there? You basically sanction people in lieu of criminal cases against them. I think sanctions are a very good thing, but legally the whole point is to avoid a legal process and to just slap a "We don't like you" on somebody in the form of sanctions. Is that a coherent argument?

Maya Lester: I think it is a coherent argument. You are talking about targeted sanctions—

Mr Seely: Yes, on individuals.

Maya Lester: Obviously there are others. I think there is definitely a great danger, as has played out in practice in a number of cases, that you make extremely serious allegations about what people are said to have done without there being a criminal trial or anything even close to it. As I said, it can simply be allegations in the public domain—untested, uncorroborated. On the basis of that alone, a far-reaching penalty can be imposed; it is not called a penalty, but that is its effect. The process for that being unwound is extremely difficult, from the point of view of the individual.

Whether sanctions are appropriate, because they come under the heading of foreign policy, is not for me to say. However, I can say, from a rule of law perspective and the individual's perspective, that if someone finds themselves subject to one of these measures, they will invariably think, "How is it possible that I am accused of this and I have only the most basic opportunity to make observations on it and to present my case?", which will almost always be ignored, and the measures will simply continue indefinitely.

Q381 **Mr Seely:** I mean, they were not ignored in the case of Deripaska and Lord Barker. I suspect we will come on to that. You can fight against them, and some people have successfully done so.

Maya Lester: You can, and indeed I have been involved in a very large number of cases in the European Court acting for individuals who have successfully been removed from a sanctions list although, as I said, it is often a slightly pyrrhic victory, because they are then relisted the next

day. It is certainly true that there is usually some opportunity to have a court have a look at the basis for your designation, but how much will the courts scrutinise? To go back to the beginning of your question, the nature of the allegations is often something like a press report or an internet search resulting in allegations. In an English court equivalent, such as an asset freeze—for example, based on a suspicion of, or evidence of, criminal activity in the UK that would result in a domestic freezing order—the High Court would require a much higher level of evidential sufficiency than is required in a sanctions case. It is definitely the case that the thresholds are lower.

Q382 **Royston Smith:** I understand that policy is not your thing, that the law is your thing, but as far as you are aware does the UK have sufficient resources to enforce sanctions effectively?

Maya Lester: Enforcement is obviously not directly a Brexit issue but is an ongoing one. My understanding is that we are not badly resourced in financial terms when it comes to enforcement. As you are aware, there is a new-ish agency, OFSI, which is tasked with enforcement. My impression, from talking to a number of people in the legal and financial services sectors, is that a new agency has a real opportunity to engage with the private sector—the legal sector, insurance, banking, whatever it is—really to understand it and to take joint responsibility for compliance with and enforcement of sanctions. That is not an opportunity that OFSI has yet taken, if I may put it that way.

There is a great deal of frustration on the part of the private sector with the lack of real proactive engagement on sanctions enforcement. That might be a resource problem; my guess is that it might be more about the people, or the expertise. I simply do not know. All I will say is that it may or may not be a matter of financial resourcing, but if you compare with the US—a slightly unfair comparison, because OFAC is both the Foreign Office and the Treasury when it comes to sanctions, as it designs and enforces them—the level of engagement with industry, the speed and engagement on the real issues, is far greater in the United States than it is here.

There are also many frustrations with the way in which the Treasury conducts, for example, the licensing policy that I described. For example, as a lawyer, when you are engaged in the process of trying to get a basic licence to be able to be paid for conducting this kind of work, you make a very reasonable application, with capped legal fees, for an exception to an asset freeze, and OFSI—I have seen this repeatedly—will send letter after letter asking questions like, "What is the name of the paralegal who is going to be conducting this work?", or, "Why is this work being conducted only partly by paralegals, and partly by associates and by partners?" In other words, a huge amount of resource is being spent on issues that do not seem to me, to put it mildly, to go to the heart of sanctions policy.

So far, in enforcement terms, we have seen only one civil enforcement decision by OFSI, and that in a very small case—it might be important, but it is very small—so again, we are not yet seeing its full capabilities. I do not know whether it is a resourcing problem, but I simply report that I

think that the private sector has not been overwhelmed with the seizing of this enforcement opportunity.

Q383 **Royston Smith:** Your assessment of OFSI's performance—I know it is relatively new—is what? "Could do better"?

Maya Lester: Yes, I think that is probably my candid assessment, and that of a number of practitioners in this field. It is a bit of an unfair assessment, because OFSI is only just getting started. It has made it very clear that enforcement is a priority, and it will start coming out with more decisions, but my point is that enforcement is not just about fining companies for breaching sanctions; it is about engaging with industry to try to make sure that everyone understands what it is that it is trying to do, about the cost of compliance being as streamlined as it can be, and about just really understanding the problems and what those who have to engage with sanctions feel in this sphere. I hesitate to say it, but "Could do better" is probably the general feeling.

Q384 **Priti Patel:** I would like to talk about Magnitsky and your written submission. Throughout the inquiry we have discussed with other witnesses the genesis of Magnitsky, which we all know, and the effectiveness. Do you have a view of the extent to which the Magnitsky sanctions are effective if they are not co-ordinated with other countries?

I would like to come to another feature that I do not think we have unpacked enough. You said in your submission that sanctions should not be used for politically motivated purposes. Therefore, what kind of safeguards do you think should be put in place?

Maya Lester: As with all the questions about the effectiveness of sanctions, the first question is: what are they trying to achieve? In the case of Magnitsky sanctions, it could be that, to a certain extent, they are trying achieve symbolic political messaging—"We disapprove of gross human rights violations and corruption". Putting someone on a sanctions list always has the danger of making them a hero, but one hopes it does not and sends a strong message that this conduct is disapproved of.

In more practical, monetary terms, their effectiveness will depend entirely on whether individuals hold assets in the United Kingdom and whether they wish to travel to the United Kingdom. It could be that a number of individuals feel a very real financial impact, and others may not. That may or may not matter, because it depends what they are trying to do. Whether they are unilateral or multilateral is as simple as whether their assets are frozen only in the UK, or also in other EU member states, the US or anywhere in the world.

On safeguards, I have said repeatedly that there must be a proper evidence basis. If you are going to accuse somebody of gross violations of human rights, there should be a proper basis for doing so, rather than it being simply an allegation—it is easy to make that without it being corroborated. I am not suggesting that there has to be a criminal trial, because that is not the purpose of the regime, but something other than an uncorroborated allegation. Secondly, it is already in the Act: a real

regard to proportionality. "Does this serve the purpose of the measures, and is it worth it, given the significant likely impact on the individual?" That safeguard is already there, but again it will depend how it is applied.

Section 32 of the Act requires reporting on Magnitsky listings on the human rights purposes, and provides for ongoing scrutiny. That is a real opportunity for Parliament to provide a safeguard in the form of someone looking at whether there is an ongoing justification for those individuals being listed. You could say that the various thresholds and safeguards matter less if they are purely symbolic—if somebody does not actually hold assets here. Obviously, the more far-reaching the effect, the more important it is to have those safeguards in place.

Q385 **Chair:** I want to come on to a few other areas, mostly to do with sanctions we have been talking about on En+ and RUSAL. Could you give me your assessment of the listings and subsequent de-listings of those sanctions by the US Treasury?

Maya Lester: I am not a US lawyer—that is my caveat. This is all just my understanding. Deripaska himself remains sanctioned and is still subject to sanctions. You have no doubt seen that he is challenging the basis for his sanctions. My understanding is that the lifting of sanctions on RUSAL and En+ was not directly Deripaska-driven; it was driven by those entities. Sanctions remained on him; those entities wished themselves not to be sanctioned. Therefore, OFAC engaged in an extensive negotiation process and reached a settlement. Having looked at the terms of the settlement, it strikes me that OFAC, which is the most aggressive enforcer of sanctions in the world bar none, has required of those companies an unprecedented level of transparency when it comes to showing that what it is required to do has been done. What it has been required to do is basically a divestment of shareholding, so that the ownership is down to below the threshold, but also, crucially, control, so that it has to be shown within the terms of the deal that Deripaska no longer has control over those entities.

There is ongoing auditing of that situation, in which my understanding is that any contacts between Deripaska and the boards and management has to be reported. If Deripaska himself were to receive any kind of benefit, it would be frozen, because he himself is designated.

My impression is, first, that OFAC were extremely proactive, engaged and creative in a way that, with respect, one could never imagine happening with the sanction authorities here. Secondly, if the goal of the sanctions is to show that entities can be removed from sanctions lists if ownership and control—after all, the purpose of the sanctions measures—are divested, that is what has happened.

But this goes far further than any other requirements on companies in terms of the level of detail and scrutiny. If what you are interested in is, "Can you reduce a sanctioned individual's level of ownership and control and monitor that"—that is actually happening—"and have those goals monitored on a close and ongoing basis?", that is what the US seems to be achieving at the moment.

Q386 **Chair:** You draw from that that there are clearly lessons that we could learn in order to improve our monitoring. Earlier this month, the Treasury Committee published a report in which it called for the listing of En+ on the London Stock Exchange. It referred to it as a failure of sanctions policy, not of implementation. Do you agree?

Maya Lester: I don't know too much about the listing process, but when it was listed, Deripaska was not subject to sanctions. I am not sure why it would be a failure of sanctions policy, unless the Committee is saying that he should have been sanctioned at that time. Whether Deripaska should or should not be EU sanctioned is not something I have a view on, other than to say that a number of those Russian individuals who have been have become heroes in national terms. Again, that is a policy issue. Since there was no sanctioning at the time and since, as I understand it, OFSI was consulted on the sanctions position at the time of the listing, I am not sure what the Committee is getting at when it sees that listing itself as a failure of sanctions policy.

Q387 **Chair:** Is there any argument that the security services should be feeding in, given the nature of the information that they hold?

Maya Lester: Feeding into the listing or feeding in on sanctions?

Q388 **Chair:** Feeding in on sanctions.

Maya Lester: I would be amazed if they were not feeding in on sanctions. I do not know, but I suspect that a number of Government agencies are actively involved in providing information on individuals who may become, or are already, subject to sanctions.

Q389 **Mr Seely:** Just to follow on from this general point—not that precise point—do you think overall, looking at Deripaska and En+, that this is a victory for justice and common sense, or do you think, as was presented very eloquently by Lord Barker, that this is an example of money buying the law?

I am genuinely divided about it. You could say you are punishing minority holders of En+ or you could say this is an oligarch whom people are going to tip-toe round, using huge amounts of political and economic power to reverse engineer his way out of sanctions. Which do you think it is?

Maya Lester: Are you focusing there on the lifting of sanctions on En+ and RUSAL?

Q390 **Mr Seely:** Yes. You had sanctions and sanctions were then lifted, in a very deliberate campaign in which either Deripaska or Barker—or whoever wants to take responsibility—spent a great deal of time, effort and money getting lobbyists and lawyers to deliver an outcome that they wanted. Is that a fair point, and why should this company be damaged, or is this an oligarch buying his way out of trouble?

Maya Lester: I cannot comment because I simply do not know anything about the degree to which there was lobbying, over-lawyering, or any of that. I have no idea whether that was legitimate or illegitimate. What I do know is that Deripaska remained subject to sanctions. In my view it is a

major weakness of a number of sanctions regimes that either an individual or a company does not know what it needs to do to have sanctions removed and does not even know whether it is possible to have sanctions removed. Obviously in some cases there will be no justification in foreign policy terms for having sanctions removed. In other cases there may be, but in the case of companies who are not themselves accused of doing anything wrong, their assets are frozen and they cannot operate in jurisdictions because of who owns them and controls them. I think it would be a very different picture if those companies themselves were said to have been funnelling funds illegitimately or if there were any element of misconduct. My understanding is that they were simply sanctioned for the level of ownership and control by Deripaska. In those circumstances I personally cannot see what is wrong with a situation in which you absolutely make sure that the ownership and control in real terms, not just in formal terms, have been reduced to a point where you simply cannot say that he owns and controls them.

Q391 **Mr Seely:** That is the big question mark. You are taking a western approach. A Russian would say that an oligarch who owns a company will find ways of influencing that company, whether it is legitimate or illegitimate, formal or informal. You are taking a very western and a very proper approach to that. It is not an approach that many Russians would take towards us.

Maya Lester: Well, maybe. The approach I am taking is in the knowledge that OFAC are very aggressive in this field. I do not use that word pejoratively, but if there were ever an agency that was interested in enforcing sanctions and making sure there was no level of ownership or control, it would be OFAC. On the level of detail in the agreement and the ongoing monitoring by which they try to ensure that what you have said is the case is not the case, I have never seen anything like it before. Of course, it could be the case that the wool has absolutely been pulled over OFAC's eyes, and that even though every phone call and meeting is reported to them, something entirely different is going on. I have no knowledge of whether that is true or not. All I am saying is that the most aggressive agency is looking at it. There is a separate firm of auditors looking at this on an ongoing basis. That level of detailed scrutiny has never happened before as far as I know. If what you are trying to do is make sure that Deripaska no longer owns or controls those companies, I cannot think of a way in which you would try to do it in a more detailed way.

Q392 **Mr Seely:** Fair enough. Do you think, therefore, that this sets an interesting precedent for the future, so that when we start sanctioning people in future we will have to be much more careful about how we do it, or much more mindful of separating individuals from their companies? Or do you think that, because of the power and money of this individual, this is a one-off? It seems to me that it could be a precedent of sorts.

Maya Lester: It is certainly a precedent in one sense. The only remarkable thing in legal terms about the En+ and RUSAL story is that

OFAC engaged to the degree that they did and reached this deal, and also the level of detailed scrutiny.

Q393 **Mr Seely:** Why did they do that? Do you think that is where the political clout or lobbying came in?

Maya Lester: I don't know. They are very interested in effective enforcement of Russian sanctions. One prong of enforcement might mean, "How can we ensure that sanctioned individuals do not have control over the companies, which is what we are trying to achieve?" I don't know why they are more active. They are actively engaged in a number of cases. That was obviously a very high profile example. If the suggestion is that there was a political element, Russian sanctions are obviously highly political. I simply don't know whether there was influence. The other thing to say is that of course Russia sanctions in the United States are particularly highly political, because Congress and the Executive branch are at war over Russia sanctions policy. Whether there is flexing of muscle by one agency, I just don't know. There is nothing unusual about it, in the sense that every company owned or controlled by a sanctioned individual is subject to sanctions. That is exactly the same in the United States as the European Union. What the EU doesn't do, and I think perhaps it could do if it had the capability, is say, "Okay. Everyone who is owned or controlled is subject to sanctions, but actually, why don't we talk about whether there is a way, if you no longer own or control them, you could have sanctions removed so that you are able to trade?"

That is not really a conversation that the agencies in the EU are as actively engaged in as OFAC is. From a sanctions policy perspective, I suppose it would be a good thing if they were, because anything that is furthering the purpose of the sanctions—that is, reducing ownership and control of sanctioned individuals—you could say is a good thing. But the rules are the same. The ownership and control test is basically the same in the EU and the US, as I understand it.

Mr Seely: Thank you.

Q394 **Conor McGinn:** I am keen to develop this a little. Part of the reason the Treasury Committee reached the conclusions it did was due to evidence it heard from the Economic Secretary to the Treasury, who said En+'s listing on the stock exchange was unable to be blocked because of the narrowness of the policy.

As the Chair said, they concluded, therefore, that it was a failure of design rather than implementation. He went on to say that he would like the power to block companies listing on the stock exchange on national security grounds. How feasible do you think that is? What is your assessment of that?

Maya Lester: I will duck out of answering that directly because I just don't know about London Stock Exchange listing rules. My only comment would be, first, the suggestion that it is a failure of sanctions policy, as I have said, is strange, because there were no sanctions in place at the time, which may be what he was referring to.

Q395 **Conor McGinn:** I think he was, because I suppose what I am getting at is that, where issues of national security interact with sanctions policy, he was making the point about the narrowness of that—that is, that not taking it into account meant he was unable to do something that he felt would be in the country's national security interests.

Maya Lester: Again, I just don't know about the listing. The only thing I would comment on is the use of the phrase "national security" in this context. It is a bit like foreign policy. It may or may not be justified in this case, but very often national security and foreign policy are used again and again in a sanctions context to mean, "We don't have to look too closely at the way in which this is being done, because it is all in the interests of national security and foreign policy."

Was there a national security element, bearing in mind that Deripaska wasn't listed? He has been listed in the US because he is involved in the Russian energy sector, as I understand it. The companies, En+ and RUSAL, are not themselves alleged to have engaged in any misconduct. This is not a terrorist context; this is not a gross corruption context.

I have no idea whether there are allegations that could be made against those companies or him, but I am not sure what the national security context would be that the Minster would have in mind, when it comes to that listing. But I simply don't know about the listing powers.

Q396 **Conor McGinn:** Presumably, mechanisms would have to be put in place if that power were given, either to the Minster or another body, to stop it being used for political purposes, or arbitrarily, or for ill-defined reasons.

Maya Lester: Yes; again, I just don't know what the legal framework is on listing—whether there are bases for challenging a listing or a non-listing. It is not my field.

Q397 **Conor McGinn:** Bear with me on the theme of how national security interacts with sanctions. This Committee, in its report about Britain and the overseas territories, concluded that, "Parliament has judged public registers of beneficial ownership to be a matter of national security," and expressed disappointment that those public registers would not be published until 2023. That is particularly an issue about overseas territories.

Do you think the Government's approach to money laundering rules, vis-à-vis the overseas territories, undermines its objectives to create a robust financial sanctions regime? Or do you think they are separate issues? Or do high standards in one enhance the other?

Maya Lester: I think sanctions and money laundering are separate issues, although obviously there is an overlap. When it comes to sanctions in the overseas territories, the position is pretty clear, because UK sanctions policy applies in the overseas territories. There is an Order in Council that simply extends UK sanctions policy. I have never seen it suggested that there is any sanctions problem in the overseas territories or that loopholes are being exploited. When it comes to anti-money laundering, that is far less my field. I know that the requirement for there

to be registers of beneficial ownership is in the Sanctions and Anti-Money Laundering Act 2018. I see the issue that 2023 as the date for them to be operational has come in because the Sanctions and Anti-Money Laundering Act 2018 only requires orders to be in place before that. The Financial Action Task Force rates the UK quite highly in its anti-money laundering capabilities, and commented in its most recent report on how the UK is broadly doing well when it comes to anti-money laundering. There is a trend towards requiring greater transparency in the overseas territories. I see nothing wrong in principle with that being the direction of travel, but I cannot comment beyond that on insufficiencies in the field of anti-money laundering.

Conor McGinn: Thank you.

Q398 **Catherine West:** Further on that theme, one of the elements that interests me is the link between sources of money or undisclosed wealth and the political system, be that standard political parties as we know them or other political actors in our democracy. Will you comment on that? I know that it is not your direct area, but obviously it is relevant, and it links with the US consideration of the issue.

Maya Lester: Undisclosed wealth is now being looked into, obviously. Undisclosed wealth orders are starting be used as a tool for anti-money laundering in general. The UK is actively involved in policy and law enforcement in that area.

Q399 **Catherine West:** For example, are there provisions that would stop somebody like Deripaska donating to a political party or a political actor like a company involved in democracy? We live in such a global democracy, in a way, and that comes into how we operate as politicians.

Maya Lester: We have a whole host of checks and legal powers when it comes to donations to parties, organisations and charitable foundations. There are safeguards against the use of corrupt money in different contexts. You have to be a bit careful, because attitudes to Russian wealth in particular seem to be changing. Deripaska himself, to give an example, is not subject to sanctions here as far as I am aware. He is subject to sanctions in the US because of his involvement in the energy sector. I do not know of any legal grounds for suggesting that he should not be making a donation to a party. I am guessing that the question is not so specific.

Q400 **Catherine West:** As I am sure you are aware, the current provision is that one can receive political donations if the donor is a UK taxpayer, so you can imagine how questions could be asked. The whole gamut of advisers, pressure groups, tech companies and so on—not just candidates—would want to be as clean as possible in any election. What is your comment on that? You work in the field next to it.

Maya Lester: Yes. I will not comment further. I simply do not know enough about it.

Chair: Thank you very much for extremely detailed evidence on many different areas that has been hugely helpful. Some of the areas we looked at previously were particularly challenging and the evidence on that, too, has been extremely helpful.