

Submission to:

Constitutional Affairs Committee, House of  
Commons

Concerning:

The Funding of Political Parties

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## **Introduction**

1 The Political Parties, Elections and Referendums Act 2000 introduced what are comparatively tight restrictions on political parties. But these restrictions have been seen to be porous as each of the three main parties has in different ways tested the limits of the legislation. It is now clear that additional measures are required to clean up party funding beyond the proposal that the parties should be required to disclose commercial loans as well as donations. Our concern in this submission is with the suggestion now circulating that there should be greater public funding of political parties. We are not unsympathetic to a greater role of the State which may well be preferable to the funding of parties by wealthy individuals. But we are concerned that there are a number of issues relating to State funding that have not yet been fully addressed. We are guided in our comments by the recognition that participation in democratic politics is collapsing in the UK – electoral turnout and party membership being only the two most obvious indicators - and believe that the current scandal is not unrelated to this fact. Proposals for reform will be effective to the extent that they seek to reinvigorate the dynamic relationship between the governed and those that do the governing

## **The Reliance on Large Personal Donations**

2 The main concern about party funding in Britain continues to be the reliance of the two largest parties on large personal donations and loans. The extent of that dependence is revealed by our analysis of the data produced quarterly by the

Electoral Commission for the period covering the first full electoral cycle since the introduction of the Political Parties, Elections and Referendums Act 2001. In the period from 5 April 2001 to 5 May 2005, the political parties received a total of £148.2 million by way of donations in excess of £5,000 nationally and £1,000 locally. So far as the three main parties are concerned, these broke down as follows-

<b>Political Party</b>	<b>Number of Donors</b>	<b>Total</b>
	<b>Amount of</b>	
	<b>Donations (£m)</b>	
Conservative Party	2,775	58.8
Labour Party	4,438	65.9
Liberal Democrat Party	1,580	13.6

Broken down further on a party by party basis, these figures reveal considerable variations in the sources relied on by the major parties.

3 So far as the source of these donations is concerned, the bulk of Labour Party funding is provided by trade unions, with £42.1 million accounting for 64% of total reportable donation income. So far as large personal donations are concerned, the Labour Party received donations in excess of £250,000 from five people , these amounting to £10.6 m in total. The Labour Party also received donations of between £100,001 and £250,000 from another eleven people,

these amounting to £2.8 million, as well as aggregate donations in excess of £100,001 from another 21 donors, these amounting to another £3.32 million. The Labour Party thus received £16.8 million by way of personal donations in excess of £100,000, this accounting for 25% of its donation income. Finally, so far as corporate donations are concerned, the Labour Party received £4.5 million by way of corporate donations, of which two exceeded £100,001, though aggregate donations from another two donors also exceeded £100,001. Corporate donations accounted for 4.6% of Labour's donation income.

4 Turning to the Conservative Party, Electoral Commission data reveal that the State is a major source of Conservative Party funding, with different public funding schemes accounting for 29% of party funds. So far as personal donations are concerned, the Conservative Party received donations in excess of £250,000 from eight people, these amounting to £11.8 million in total. The Conservative Party also received donations of between £100,001 and £250,000 from another nine people (including one who also gave donations in excess of £250,000), these amounting to £2.2 million, as well as aggregate donations in excess of £100,001 from another 31 donors, these amounting to another £3.87 million. The Conservative Party thus received £18.1 million by way of personal donations in excess of £100,000, this accounting for 43% of its donation income from private sources. Finally, so far as corporate donations are concerned, the Conservative Party received £12 million by way of corporate

donations,<sup>2</sup> accounting for 29% of the Conservative Party's donation income from private sources.

5 Turning finally to the Liberal Democrats, here we find that like the Conservative Party, the Liberal Democrats received a significant proportion of donation income from different public funding schemes (policy development grants, as well as Short and Cranborne money), with a reported £3.8 million accounting for 38% of reported donations. The party received no personal donations in excess of £250,000, and only one in excess of £100,000 with another donor producing more than £100,000 in aggregate by means of a number of smaller donations. So far as corporate donations are concerned, the Liberal Democrats received £5.4 million by way of corporate donations. Almost half the value of these donations came from a single source, 5<sup>th</sup> Avenue Partners Ltd which donated in aggregate some £2.4 million. The Joseph Rowntree Reform Trust provided another £1.7 million, and another corporate donor provided £290,000. These three companies alone donated in aggregate £4.2 million, this accounting for 80% of Liberal Democrat corporate donations, and 44% of all donation income from private sources.

### **The Practice in Other Countries**

6 Other countries vary enormously in terms of how they deal with large donations, though no one solution is obviously better than the other in avoiding

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<sup>2</sup> One corporate donation was for £1 million, another 4 exceeded £250,000, and another 12 were between £100,001 and £250,000, with donations of yet another 21 companies each yielding more than £100,001 in aggregate.

leaze or scandal. One strategy is to impose a cap on donations. **Contribution limits** exist in a number of countries, notably the United States where the law was revised by the Bipartisan Campaign Finance Reform Act of 2002. Under the present law individuals can donate to candidates \$2,000 per election and to national parties \$25,000 annually. An additional \$10,000 can be donated annually to a State party's federal account. There is also an overall limit of \$95,000 in aggregate on how much an individual can donate in a two year cycle. Additional flat rate limits apply also to political action committees which were set up to navigate the ban on corporate and trade union contributions, and are now an important means by which companies make donations to candidates and parties in federal elections. Political action committees also engage in large scale independent expenditure for or against parties and candidates, an inevitable consequence of a system that limits donations. If donors are unable to support candidates directly, it is naïve to think that their money will not be used in other ways.

7 Contribution limits are also to be found in a number of European countries, including France where only donations from individuals are permitted, but where donations to candidates are subject to a cap of c £5,000 and donations to political parties to a cap of c £7,000. There are no limits on how much parties may give to candidates, and the needs of the parties are met by generous (by British standards) public subsidies. Other countries where contribution caps are to be found include Spain and Italy. In other countries, however, there are no contribution limits. This is true of Germany, Sweden, Australia and New Zealand.

For obvious and compelling reasons, it is a feature of countries where there is a strong Labour Party with affiliated membership (Australia, New Zealand, Sweden), though the absence of contribution limits is not unique to such countries (Germany), and it remains true of those countries where the nature of the relationship has changed (Sweden). It is nonetheless the case, however, that statutory contribution caps is a difficult strategy to embrace in a jurisdiction with a diverse internal party structures in which certain political parties (as in the case of the British Labour Party and the Australian Labor Party) consist of both individual and organisational members of different sizes.

8 Another strategy for dealing with large donations is substantial **public funding** or State support for the parties to reduce the need for and the dependence on large private donations. It is widely believed that there is no public funding of political parties in Britain. Although true if one understands public funding only in terms of a block grant, there are nevertheless various forms of public support for parties now in existence. These include support for candidates at elections, the provision of free broadcasting time to the political parties, the policy development fund, the assistance for the parliamentary activities of the Opposition parties (the so-called Short and Cranborne schemes), and the payment of special advisers, not to mention the payment of MPs which at one time was a call on party funds. The practice in this country is thus to provide support to the parties to relieve them of costs they would otherwise have to bear themselves, or to fund dedicated projects. In many other countries in contrast the State heavily subsidises the general activities of the

parties. The difference is that in this country we have developed ad hoc systems of State support which are directed to specific ends in contrast to what others have developed as large block grants.

9 So far as countries with State funding are concerned, the nature of the dependence on the State varies from country to country. In Spain it is estimated that as much as 80% of party funds are provided from public sources, whereas in Germany by law public funding may not account for more than 50% of party funds. But despite this legal restriction in Germany, the total amount of public funding distributed to the parties which qualify may be as much as €133 million annually. The money is distributed under a formula based partly on votes cast in favour of the party or its candidates in recent elections, and partly on the total number of members in the party. Public funding also operates in Sweden, where the scheme is made up of two major parts: the first is to support the general activities of the parties, and the second is to support the activities of the members of the Riksdag and the party groups in the Riksdag. The former stands at SEK 164 million, and the latter SEK 172 million, or c £26 million in total. Unlike in Germany, public funding in Sweden is allocated principally on the basis of seats won by rather than votes cast in favour of those political parties which qualify. Although the amount of money made available to the parties in Sweden is thus significantly smaller than in Germany, it is significantly higher in terms of population density.

## **Proposals for Reform**

10 The 2000 Act went a long way to address the problems of party funding. Transparency and election spending limits were both important initiatives, though the former has been shown to be under-inclusive and the latter to be too high. But the 2000 Act only went part of the way towards addressing the problems of party funding with the question of large donations remaining outstanding. Recent events may, however, have helped to resolve that problem, with the spectacular publicity of the parties' creditors in the national press, including photographs of these creditors on the front pages of national newspapers as if they were fugitives from justice. It remains to be seen whether many people will want to court such publicity in the future, whether by large donations or loans: to that extent disclosure may yet work to reduce the number and size of large donations to a level that would be publicly acceptable, though it is not yet clear what that level will be.

11 There are many reasons why large personal donations to political parties should be actively discouraged. There is clear evidence that they give rise to access to senior party officials if not influence, and they give rise to suspicion that those who make donations secure something in return. They thus corrode democratic principle and erode public confidence in the democratic process. The question, however, is what to do about it? One answer is transparency, which as we have already seen may gradually make the wealthy even more reluctant to donate in the future, and the parties reluctant to seek their support. Another answer is to reduce the demand for money by limiting the permitted expenditure of the parties. But that may be of limited utility if it leads to money

being diverted to constituency parties, or to 'independent' or third party campaigns, as in the US example. Yet another answer is to displace the large donations with an alternative source of income, which can come from only one of two sources, namely

- the citizen as elector willing to support the political parties voluntarily through membership contributions or small donations, or
- the citizen as taxpayer conscripted through public funding to provide support for the political parties.

12 There are many arguments for and against enhanced State support for the political parties. One simple argument in its favour is that it is better than the alternative of parties funded by rich individuals. But if the taxpayer is to be asked to replace the existing large donations what would be the cost to the Treasury? The foregoing account suggest that the Labour Party received £16.8 million by way of personal donations in excess of £100,000 in the last parliamentary cycle, the Conservative Party £18 million. The Liberal Democrats received over £4 million by way of corporate donations in excess of £100,000 in the same period. To this we now need to add the loans of c £14 million and c £16 million to the Labour Party and Conservative Party respectively, giving revised figures of £31 million, £34 million and £4 million. At current prices, the two main parties are thus each dependent on large donations and loans for more than £30 million in a full electoral cycle. A public funding regime designed to displace the private funding would thus need to provide the two main parties with something like

c£6 million annually in a year other than a general election year and c£12 million in a general election year, though enhanced public funding obviously could not be restricted to such parties and an equivalent amount would need to be available for distribution to the smaller parties.<sup>3</sup>

13 These figures could be slightly reduced (but only slightly) if the level of permitted expenditure at a general election were to be reduced from £20 million to £15 million as the Electoral Commission has proposed.<sup>4</sup> On the other hand the figures would have to be increased if public funding was being designed to displace donations of a sum less than £100,000. But if additional public funding for the parties were to be introduced questions will arise about which parties should be eligible, there being concern in some quarters that the money should not be used to fund extremist parties. There will inevitably be a temptation for the large parties to create a cartel whereby public funding is made available only to the parliamentary parties, in the same way that the policy development grant is currently restricted. Although this restriction is found in some countries, it is not found in them all, and it is a practice that has given rise to difficulty in Canada where the Supreme Court of Canada has comprehensively rejected public funding arrangements (in this case tax relief for small donations) which discriminated against small parties. These arrangements were found to violate

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<sup>3</sup> It is to be pointed out, however, that there may not be a need to displace this money completely, given that large donors may be willing to continue to give smaller sums on an annual basis. So rather than give a one off donation of £500,000, a donor might give four annual donations of £100,000 and an election grant of £100,000, if a limit of £100,000 were to be imposed by law or accepted by the parties.

<sup>4</sup> Electoral Commission, The Funding of Political Parties (2004).

the Charter of Rights and Freedoms,<sup>5</sup> and a similar challenge could be expected in this country under the Human Rights Act 1998. At the time of writing another round of litigation is under way in Canada to challenge the exclusion of small parties from the new public funding regime which was introduced in 2004 at the same time as tight contribution limits.

### **Public Funding and Democracy**

14 Apart from threshold questions of eligibility, there are two other questions which arise in relation to public funding. The first relates to the principles by which such money is to be allocated, the second to the conditions that political parties might be expected to meet to receive such funding by the State. So far as the former is concerned, the most straightforward and most common method of allocating public money is on the basis of votes at the most recent general election. The scheme introduced in Canada in 2004, for example, provides \$1.75 (index linked) for each vote in favour of the party at the most recent general election. This has the virtue of ease of understanding, and ties public funding to the legitimising effect of electoral support. It would certainly be much fairer to parties like the Liberal Democrats than a system of allocation based on seats won at Westminster or a system based on a combination of seats won and votes cast in favour of the party.

15 The other issue which arises, however, is whether public funding should also be used to create incentives to the parties to recruit members. At the present

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<sup>5</sup> Figueroa v Canada [2003] 1 SCR 912

time there is no such incentive when it is easier to ask a few willing rich men to sign seven figure cheques. It is sometimes argued that one way by which parties could be given incentives is by the use of the tax system so that tax relief is given for small donations to the parties. This is a common practice in other countries though the scheme most likely to be adopted in this country (based on Gift Aid for charities) would be less attractive to the taxpayer given that it is the party rather than the taxpayer who gets the benefit of the relief. Apart from excluding non taxpayers, the other problem with tax relief, however, is that it provides incentives to secure donors not members. With this in mind, it is proposed that any public funding should be used to create incentives on the parties to recruit and retain members. As already indicated, a template for such a system is to be found in Germany where public funding is distributed to the parties on the basis of votes secured at recent elections and on the number of people the party has in membership. The parties thus have additional incentives to get out the vote (now a chronic problem in Britain) and to take membership seriously. (It is also the case that income tax relief exists for small donations in Germany).

16 Turning to the question of the conditions which ought to be satisfied before qualifying parties are entitled to public funding, it is important to emphasise that public money is used to support political parties because of the contribution the parties make to the democratic process. Unwilling taxpayers are asked to sustain organisations because they are essential to make modern democracy work, a system from which we all benefit. But if political parties are to receive

public money in the interests of democracy, the public is entitled to insist that these same political parties are organised and governed in accordance with democratic principles and procedures. It should not be enough that parties take membership seriously; they ought also to take members seriously. If enhanced public funding is to be introduced, it should be available only to those parties whose rules comply with a number of minimum guarantees of party government. These guarantees should be designed to keep parties open and inclusive and to restrain the oligarchic tendencies within parties. They should be designed to encourage people to join political parties which should be places where people are made to feel that they can participate in political life in circumstances where their presence matters and their voice is heard.

17 In other words, just as trade unions were 'given back' to their members in the 1980s, so political parties should be 'given back' to their members in the beginning of the 21<sup>st</sup> century.<sup>6</sup> This should be done by way of a **Charter of Members' Rights** contained in legislation. It remains a striking feature of British law that although political parties are now publicly accountable through the Political Parties, Elections and Referendums Act 2000, they are not accountable to their members beyond the basic terms of their own rules. The Charter of Members' Rights on which any additional public funding should be conditional ought to include the following –

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<sup>6</sup> For the current obligations on trade unions, see Trade Union and Labour Relations (Consolidation) Act 1992.

- The right of party members (individual and affiliated) to determine the contributions policy of the party – from whom the party is prepared to accept money and how much it is prepared to accept from any individual donor annually
- The right of party members (individual and affiliated) to be involved in the selection of party candidates for elected office, and for party members to elect or select party nominees for the House of Lords while the current system of nomination continues
- The right of party members (individual and affiliated) to participate in the policy making procedures of the party, the right to take part in the election of party leader and other senior officers, and the right not to be unreasonably expelled from membership of the party.

In addition to the foregoing, freedom of information principles should apply to political parties so that members have a right of access to information held by the party bureaucracy which – additionally – should be required by law to serve the interests of the party membership rather than the party leadership.

## **Conclusion**

18 It is important to look for solutions that are realistic and acceptable rather than ones that are perfect. If there is a perfect solution to the problem of party funding we would have found it by now. But there is none, as is reflected by the

different solutions adopted by different countries, and the similar problems of funding abuse which exist in these countries as well. Funding reform options in every country are constrained and dictated to some extent by the nature of the political system, the structural diversity of political parties, human rights obligations, and the manner in which problems are presented. It is also important to accept that like the 2000 Act, the next round of reform will not be the last: it will be the last until the next one. Party funding reform is in effect a game of catch up as the regulators engage in a constant struggle to keep pace with funding and spending patterns which are inevitably conditioned by a desire to exploit loopholes in legislation in order to give one party an advantage over another in what is an intensely competitive environment. But before public funding can be introduced, it is above all important to confront voter scepticism. This could be done by creating incentives to parties to recruit members and by ensuring that public money is going to organisations that are run in accordance with democratic principles. It would no doubt also help if the cost to the taxpayer were to be met by the transfer of resources from existing budgets.

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