Company donations to political parties: a suggested code of practice

June 1985
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The Constitutional Reform Centre and the Hansard Society thank Edmund Dell and his colleagues on the Working Party, which was established under their joint auspices. They welcome the Report and the suggested code of practice as a valuable contribution to the complex and controversial subject of political financing, which deserves study by all those interested in the health and openness of our parliamentary democracy.
1. Introduction

Terms of reference

1.1 A Working Party was jointly established by the Constitutional Reform Centre and the Hansard Society for Parliamentary Government in January 1985 to enquire into the question of company political donations and to make recommendations on a code of ‘best practice’ for companies considering whether to make such donations.

1.2 The membership of the Working Party was:

The Rt Hon Edmund Dell Chairman
The Rt Hon Christopher Chataway
John Ellard
Sir Leslie Smith
Peter Smith

Richard Holme, Chairman of the Constitutional Reform Centre and a Member of the Hansard Society Council, acted as Secretary to the Working Party.

1.3 The Working Party sought written or oral evidence from all the political parties, the CBI, the Institute of Directors, the TUC, from a number of company chairmen and several other interested bodies. Full acknowledgement is made in Appendix 2 to all those who assisted our work with their expression of opinion.

1.4 The terms of reference of the Working Party required us to draw up a code of ‘best practice’ which would assist a conscientious Board considering whether to make political donations. The terms of reference have compelled us to consider also the role of corporate donations in the political system as a whole. In pursuing this question, the Working Party has drawn extensively on the work of the Committee on Financial Aid to Political Parties* chaired by Lord Houghton which reported in 1976, and on the Hansard Society Commission† chaired, like our Working Party, by Edmund Dell which reported in 1981. In expressing our appreciation for the help received from the Reports of both these Commissions, we would like to say that we share the major premise underlying their deliberations, that the financing of political parties is a legitimate matter of public interest.

It follows that our recommendations have not been derived from a narrow definition of the issues involved, nor have we regarded them as being of concern only to the directors of companies considering political donations. We have adopted a broader civic perspective which involves consideration of the implications of any system of financing political parties for the political system as a whole.

Our suggested code of 'best practice' will, we hope, be of particular interest to public companies, but we believe that private companies will find it of value too.

2. Background

The existing legal framework:

The Companies Act 1967

2.1 The only current statutory provision which directly controls the ability of a company to make political contributions is Section 19 of the Companies Act 1967. Section 19 (1), which also governs the making of charitable contributions, provides that where a company makes political or charitable contributions of more than £200* in any financial year then details of such contributions are to be given in the Directors' Report for that year. The Directors' Report is circulated to shareholders and filed at Companies' House so that it is also open to public scrutiny.

2.2 Where Section 19 (1) applies, the Directors' Report must contain the name of each person to whom more than £200 has been given for political or charitable purposes together with details of the amount given. Where more than £200 has been given by way of donation or subscription to a political party, the identity of the party and the amount of money given must also be disclosed. Where a company has subsidiaries and the holding company and its subsidiaries between them give more than £200 in charitable or political contributions in any financial year, Section 19 requires disclosure in the Directors' Report of the holding company of all political or charitable contributions by the holding company and its subsidiaries: but the individual subsidiaries do not have to disclose their own political contributions.

2.3 Section 19 (3) lays down when a company is to be treated as giving money for political purposes. It provides that a company is to be treated as having given money for political purposes either if it gives a donation or subscription to a political party in the United Kingdom, or any part of the United Kingdom, or if it gives a donation or subscription to a person who, to its knowledge, is carrying on, or proposing to carry on, any activities which can, at the time at which the donation or subscription was given, reasonably be regarded as likely to affect political support for a political party.

2.4 This definition does not appear to be comprehensive enough to catch 'conduit' organisations which, possibly not being companies themselves, collect funds from companies and pass them on in whole

or in part to the Conservative Party. It certainly has not caught research organisations whose researches are carried out exclusively on behalf of one political party. It does, however, catch companies who give to ‘conduit’ organisations knowing that the money will be passed on to a political party.

Companies’ powers to make political donations

2.5 Although there is no statutory restriction on companies making political contributions, but only the disclosure requirement in Section 19, under general principles of company law a company can only make a political contribution if it has power to do so. A company must satisfy two requirements if it is to have power to make a valid and proper political contribution.

2.6 First, it must show that there is some provision in its Memorandum and Articles of Association — which forms part of the constitution of the company — which either expressly or implicitly authorises the making of a political contribution. Many companies will have constitutions which authorise them to make political contributions. Others will not. We have read statements by Ministers, and received evidence from the Chairman of the Conservative Party, to the effect that company directors have the power to make political donations if their companies’ Articles do not exclude it. Our understanding, on the contrary, is that a company’s Memorandum and Articles of Association must authorise it.

2.7 Second, the directors of the company must be able to show that it is in the best interests of the company to make the payment. They must, in other words, be able to show that the company can expect some benefit (direct or indirect) as a result of the payment. A commercial company has no power simply to give away its money.*

Cases and precedents

2.8 A recent case which illustrates these principles is Sunmonds v. Heffer (24 May 1983). Although this is an isolated judgment in reference to a company which does not trade commercially, its implications could be very significant for other companies which make donations. The League Against Cruel Sports Limited is an animal welfare organisation which campaigns against blood sports. In 1979 the Labour Party included in its election manifesto a commitment to legislate against bare coursing and stag and deer hunting. The executive committee of the League decided to make two payments, of £30,000 and £50,000, to the Labour Party. The smaller, £30,000, payment was made specifically to pay for advertising and publicising the Labour Party’s manifesto commitments about animal welfare. The £50,000 payment was simply donated to the Labour Party’s General Election Fund. A member of the League sued for the return to the League of both payments on the grounds that the League’s constitution did not authorise the making of either payment.

2.9 The High Court held that the League did have power to make the smaller, £30,000, payment. The constitution of the League allowed it to oppose and prevent cruelty to animals, including cruelty resulting from various forms of hunting. The Court held that by paying for a campaign publicising the Labour Party’s manifesto commitments on animal welfare, the League was exactly fulfilling this objective.

2.10 The Court held, however, that the League had no power to make the larger, £50,000, payment for the general purposes of the Labour Party’s General Election Fund. The Labour Party has a great many objectives which have nothing to do with the animal welfare objectives of the League. There was nothing in the League’s constitution which gave it power to give money to support such wider objectives.

2.11 The League’s constitution allowed it to “do all such other lawful things as are incidental or conducive to the attainment of” the various specific animal welfare objectives set out in its constitution. This type of provision appears very commonly in the constitution of companies. It is often relied on to authorise a wide range of activities going beyond the lengthy express objects and powers which are also normally set out in the Memorandum of Association. The Court held that this provision could only be used to authorise actions or payments which were incidental to one of the express objectives of the League, all of which had to do with animal welfare alone and not with the wider political purposes of the Labour Party. It follows that a company cannot rely on such a general object alone to authorise the making of political contributions.

2.12 The approach of the courts to the second test — whether the payments are made in the best interests of the company — can be illustrated by two tax cases. The cases in question were both considering the similar — but rather more demanding — test which determines whether tax relief is available for trading expenditure. The company must show that the payment is made “wholly and exclusively for the purpose of

*When the securities of a company are listed on the Stock Exchange, London, so that they can be dealt in there, the Stock Exchange enters into a Listing Agreement with the company which contains a large number of detailed provisions governing the way in which the company’s affairs are to be conducted. The Listing Agreement does not contain any restrictions on the ability of a company to make political contributions beyond those contained in the general law.
its trade.” This means that, amongst other things, the company must show that it can expect some commercial benefit from the payment. In *Morgan v. Tate & Lyle* (35 TC 367), the House of Lords held that the cost of the Tate & Lyle ‘Mr Cube’ advertising campaign against the proposals of the Attlee Government to nationalise the sugar industry were deductible because the campaign was intended to preserve the very existence of the company’s trade and so directly benefited the company. In *Boardland v. Kramat Pulai Limited* (1953, 35 TC), on the other hand, tax relief was refused for the costs of distributing a speech by the company’s chairman criticising the then Labour Government because the company had other objectives besides benefiting its own trade in distributing the pamphlet.

**Political context:**

2.13 The amounts of money involved in political donations by companies are very small in relation to corporate profits.

2.14 Only a minority of companies give.

2.15 The vast majority of company donations are given to the Conservative Party. Over 55-60% of central Conservative Party funds, according to independent academic estimates, are provided by companies. This amount can be around £2/3 million per annum in a non-election year, rising to £5 million or more in election years. Donations to Alliance parties from the largest companies, by contrast, amounted to some £28,000 in the same August 1983 to 1984 period, and to the Labour Party were virtually non-existent. On the other hand the Labour Party is believed to receive 85-90% of its central income from trade unions.

*The SDP is known to have received very large individual donations over the last few years, as has the Liberal Party which, in 1983, received a donation of £181,000 to be spread over three years, from the British School of Motoring, a family-owned company. It has also received substantial support in the past from the Joseph Rowntree Social Service Trust.*

2.16 Thus, relatively small sums of money from a minority of companies are nevertheless of key financial importance to the Conservative Party. The Labour Party is even more dependent on institutional finance, in this case from trade unions. This situation cannot but be a matter of public interest in a democracy based on party rule.

2.17 Virtually every democracy recognises that the financing of political parties cannot be a wholly private matter of concern only to the donor and recipient. Various combinations of restrictions and assistance from the state are in effect everywhere. The restrictions can include limits on donations and limits on expenditure. Assistance from the state can include direct state financing of political activity and the provision to political parties of free services of various kinds.

2.18 It is therefore not surprising that there have been a variety of proposals for reform in the UK and that a recurring theme of such proposals has been the need to lessen the dependence of the two main political parties on institutional backers, a relationship which the Hansard Society Commission described as one which “accentuates instead of reflecting the actual degree of conflict in society.”

**Trade Union Act 1984**

2.19 Fresh impetus has been given to parliamentary and political discussion of the issues involved by the passage of the Trade Union Act 1984. Trade unions are required by law to make any contributions to a political party out of a political fund. At one time it seemed that the intention of the Conservative Government would be to amend the law to require that a trade union political fund should be based on decisions by individual trade unionists to ‘contract in’ to the political levy rather than, as now, to permit them to ‘contract out’. In the event the Government settled for the lesser measure that trade unions should ballot once every ten years if they wished to continue a political fund financed by a political levy on members. The TUC has, however, agreed to encourage its member unions to ensure that trade unionists are made more aware of their right to contract out of the political levy if they wish.

2.20 Trade unions with political funds will hold ballots during 1985 and 1986 to determine whether their members wish to continue those funds. In view of the dependence of its central funds on trade union donations, the outcome of these ballots will be of crucial financial importance to the Labour Party.
During the debates in the House of Commons on the Trade Union Act 1984, Labour spokesmen drew parallels between trade union financing of the Labour Party and company financing of the Conservative Party. Trade unions would be under a new disability in that they would have to gain the assent of their members to their political funds. Companies, on the other hand, would be subjected to no new restrictions. They could continue to make donations to the Conservative Party without the need to maintain a political fund and with only the most minimal control from shareholders. John Smith MP, then the Shadow Employment Secretary, made a promise that a future Labour Government would introduce reciprocal legislation. A Private Member's Bill, introduced by the Labour backbencher, Derek Fatchett MP, would require companies to ballot their shareholders to establish ‘political funds’. Although this Bill is not likely to make progress, it foreshadows what a Labour Government would be likely to enact.

This Working Party does not accept a direct legal or conceptual comparability between company shareholders and trade union members. Nevertheless we believe that the Trade Union Act 1984, has inevitably raised once again the question as to how political parties should be financed, and how, in particular, companies should behave in an increasingly contentious area of public life. We do not question the democratic motivation of the Act. Indeed a majority of the Hansard Society Commission recommended the much more fundamental step of substituting ‘contracting in’ for ‘contracting out’. Nor do we question the desirability of the financing of political parties being on the public agenda. We merely note that the passage of an Act, however properly democratic its motives, which has the potential effect of reducing the income of a political opponent, or at least of forcing them, and them alone, to engage in mass persuasion to sustain their traditional sources of income, was bound to place the whole question of party finance squarely on the public agenda. The tacit understanding between Conservative and Labour not to challenge each other’s sources of income, already threatened by the emergence of a third grouping in the shape of the Alliance, is now over.

Trade unions and companies:
Legal and other differences

Trade unions exist to represent the interests of their members in industrial relations. Companies exist to trade profitably and multiply assets in such a way as to increase the equity of their shareholders. Thus the aims and structure of trade unions differ from those of companies.

In the specific context of political giving, the relationship of trade union members and shareholders to their respective organisations is also different. Trade unionists may contract out of the payment of the political levy and many do. Shareholders who dissent from a particular political donation have as their only practical remedy the selling of their shares, although they can object at the Annual General Meeting.

Political payments are the basis of intimate institutional links between trade unions and the Labour Party. There are no comparable links between companies and the Conservative Party. Unions receive block votes at Labour Party conferences on the basis of their affiliation fees. Because they are affiliated in this way to the Labour Party, unions are also represented on the National Executive Committee, on constituency party committees that select parliamentary candidates, and on the Party's regional councils. Unions cast 40% of the votes in the electoral college which chooses the party leader. Companies which make political donations to the Conservative Party have no comparable rights within the Conservative Party.†

Political comparability

Nevertheless, trade unions and companies have this in common. They are the main paymasters of British politics.

Despite the many differences between trade unions and companies, we believe that equity, or even rough justice, requires that the two sides of industry, each making decisions of vital importance to the political process, be treated as comparably as their different situations allow. However we do not base our views simply on comparability. We are concerned that what is right should be done. In the case both of trade unions and of companies, a small number of people are

*A few years ago, the TGWU increased its block vote by 220,000, not because of increased membership, but because of increased political payment. The block vote cast by each union is not directly related to the size of its membership but to its affiliation payment.

†There are many other differences in law and practice between trade unions and companies. For example, company directors are subject to penalties under the criminal law for failure to comply with the provisions of the Companies' Acts. A shareholder can sell his shares. A member of a trade union may not be in a position to resign if he works within a closed shop. The political funds of trade unions are subject to scrutiny by a Certification Officer, responsible since 1976 for ensuring observance of statutory procedures.
making decisions on behalf of a large number of people, the scope of whose political views is much wider. What we have to consider is whether this power to make what are in fact political decisions, now subject to additional control in the case of trade unions, needs to be better controlled in the hands of company directors.

3. To give or not to give?

Evidence received
3.1 In preparing this Report we have had the advantage of receiving the views, in some cases oral, in others written, of a number of organisations and of leading personalities in the business life of this country. We are very grateful for the advice that we have been given, all of which from whatever angle has been helpful to us in formulating our conclusions.

Evidence from political parties
3.2 Evidence given on behalf of the Liberal Party and the SDP, and the explicit policy of the Labour Party, all call for shareholder consent to be made mandatory for company political donations. This call has been renewed as a reaction to the Trade Union Act 1984. It is fair to say that it is also a repetition of an established view.

3.3 The Conservative Party’s view is that the overall burden of duties imposed by the law on trades unions and companies should be similar, and that the correct balance has now been found. The Conservative Party, therefore, holds that further legislation on political contributions would upset the overall balance of obligations and that, to be even-handed, a strong case would then arise for further legislation on trade union contributions.

Evidence from companies
3.4 We have sought and received evidence from companies which make political donations and from others which do not. It was only to be expected, therefore, that a wide range of opinion would be revealed. Only one of the companies that we approached failed to give us any kind of substantive reply.

3.5 We have received very strong expressions of opinion from business leaders who believe that political giving is contrary to the interests of their company. Those who take this view tend to apply it not just to their own company but to companies generally. Thus we have received categorical statements of the kind “Companies should not make political donations.”

3.6 On the other hand it is clear that other companies think it is right to give political donations. We have taken evidence from these companies as well.
3.7 We have learned that some tests of opinion have shown that quite substantial numbers of shareholders object to political donations by companies in which they invest. Some of the advice we have received implies that the very fact that it is difficult to operate a system by which shareholders can contract out makes it undesirable that companies should make political donations.

3.8 From the evidence of an opinion poll conducted by MORI in March 1985 on behalf of the Working Party, it seems that the general public is not satisfied with the current arrangements for political financing. By a small but significant margin, 48% to 37%, they agreed that trade unions should not be allowed to donate funds to political parties. By a similar margin, 51% to 35%, they also agreed that companies should not be allowed to donate funds to political parties. An overwhelming majority, 82% to 5%, believed that if companies were allowed to donate to political parties as at present, they should have to consult their shareholders. Of those who wanted consultation, 71% believed it should be compulsory and 24% voluntary.

Effect of the Trade Union Act 1984

3.9 It is clear that many of those companies which do give political donations are worried about the implications of doing so. This worry has been reinforced by the enactment of the Trade Union Act 1984, and by the additional constraints now placed on political giving by trade unions. It might be further strengthened if the ballots shortly to be conducted by trade unions on the future of their political funds had results seriously prejudicial to the finances of the Labour Party. There has been emphasis on the differences between companies and trade unions, but there has also been a keen awareness that merely to assert the differences is not an adequate response to a situation where the sources of finance for one major party may appear to have been attacked by its political opponents, however consistent with democratic principles the Trade Union Act 1984 may be thought to be.

Political donations are a significant decision

3.10 Much of the advice that we have received has, therefore, confirmed our own view that this is a subject of some importance, worthy of consideration by the leaders of our business life. Others, however, have told us that in their view this is not a matter regarded as important outside the 'hothouse' atmospheres of Westminster and Fleet Street, or high on any public agenda as compared with other more urgent priorities.

3.11 Some of the advice we have received has argued that there is no difference between political giving and other decisions of management, that it is up to management to decide what is in the interests of the company, and that, therefore, political giving is a matter for management decision without interference from shareholders. The predominant advice among the small sample of business leaders we approached has, however, endorsed the view that there is a difference between political giving and other decisions of management, and has therefore indicated acceptance of the need for some system by which political giving should be specially authorised. We do not claim any statistical validity for the predominance we have found for that view. We have not taken any scientifically controlled poll among business leaders. But we have been impressed to find that that view appears to be held by some distinguished leaders of our business life.

3.12 We have noted a very strong consensus among business leaders, even if their views in other respects diverge, that political giving, if it is done, should be done openly and without use of conduits.

Investment and Pension Funds

3.13 We have spoken to representatives of institutions managing large investment funds. Some such institutions themselves make political donations. Others do not. We have found, not to our surprise, that if political donations, or statements of policy justifying political donations, were voted on at Annual General Meetings, such institutions would normally expect to support the management. This attitude is not universal. Trustees of some pension funds may not always be prepared to endorse political giving by companies in which they have invested. We have found, moreover, that there is some concern, even among funds whose normal practice would be to support management, to ensure that the sums of money given by way of political donation are not excessive, and that the motives for giving are in the interests of the company. This is more likely to be done by private conversation than by public condemnation. We have heard that some such institutions may, as a matter of policy, not invest in companies where there may be suspicion as to the real motives for political giving.*

*Some institutions have objects limited in ways intended to appeal to certain classes of investor, for example those who do not wish to invest in companies operating in certain trades.
To give or not to give: the balance of the argument

3.14 The straightforward argument made by those who are in favour of company political donations is that assistance to a political party, or parties, is in the interests of their company and, by extension, of its shareholders. This may be on the general grounds that the party, or parties, support policies favourable to the company’s broad interests, e.g. the maintenance of a free market economy, or the free movement of capital, etc. It may be on the more specific grounds that, for instance, a particular party is in favour of nationalising the company concerned and that therefore its opponents deserve support. Such reasons, although often genuine, may sometimes also be rationalisations of other motives, e.g. peer group pressures from other companies in the same industry; maintenance of good links with, and access to, leading members of a party which may form the government; reaction to the fact that trade unions support the Labour Party; or even an expression of the personal political preference of members of the board.

3.15 A succinct statement of the case for not making political donations was that used by Sir David Orr in his farewell AGM speech as Chairman of Unilever, and quoted to us approvingly by Sir Adrian Cadbury: “We believe that Unilever must remain clear of party politics.”

3.16 Large multinational companies are particularly likely to steer clear of political giving in the UK. This can be for a variety of reasons. They may wish to avoid prejudice to their ability to work with governments of every persuasion. They may have misgivings about the implications that political giving in the UK may have in terms of their operations in other countries. Foreign multinationals may feel it inappropriate to attempt to influence the political process in the UK by means of political donations.

Companies as ‘good citizens’

3.17 It is fair to say that a larger social view is often held by both givers and non-givers. A company seeking to define its role as a good corporate citizen may eschew all giving on the grounds that those who hold great economic power should not use it to influence the political process. By contrast another company may feel a duty to get involved, believing that the victory of a particular party is not only in the interests of its shareholders but of society as a whole.*

*There are other ways in which a company may seek to fulfil its ‘good citizen’ role in the political field. For instance, a number of companies encourage executives to stand for Parliament by giving guarantees against loss of job or pension rights.

Conclusions

3.18 There appear to be strong and compelling reasons which influence most companies against making political donations.

3.19 However we do not believe that, in a plural society, it would be right for the freedom of companies to make political donations to be denied to them, although we believe that that freedom should be exercised openly, with a sense of proportion, and with the consent of the shareholders.

3.20 We are supported in this conclusion by the fear that if public companies were prevented from making political donations, political parties might become excessively dependent on smaller private and fringe companies, or on surreptitious support of one kind or another.
4. Principles to guide company giving

4.1 It is not part of our terms of reference to make root and branch proposals for the reform of political financing, although we find ourselves in sympathy with the basic thrust of the 1981 Hansard Society Commission's recommendations that the major parties' dependence on institutional finance ought to be reduced. However we do believe that even in the currently unsettled state of affairs, there are certain principles and practices that companies should consider adopting to chart their way prudently and in good conscience through waters which are not just legally troubled but politically choppy as well.

4.2 Our object has been to consider, within the legal framework as it exists, the development of a code of conduct for companies making political donations. Although we make some recommendations for legislative changes, they have been limited to matters that have seemed to us closely relevant to the establishment of such a code. The code we propose is not, however, dependent on any legislative changes.

Interests of the company and of its shareholders

4.3 We believe that there are certain principles that a conscientious board will want to follow in considering whether to make a political donation and to whom. The first is that political giving should proceed from a clear definition of the interests of a company and of its shareholders incorporated in a statement at the Annual General Meeting. Once company policy is defined in such a statement, the board's consideration of particular requests will be made easier and more consistent. This does not ignore the possibility that the interests of the company and of its shareholders may be seen to preclude any giving at all, nor that the policy may change from time to time.

Consent of the shareholders

4.4 The second principle is that shareholders should consent to company political donations. We do not think it right that company funds should be disbursed for a purpose not central to the company's trading operations without the consent of shareholders. A decision to make a political donation should not be treated as though it were exactly comparable to questions of good commercial management.

4.5 Whilst we acknowledge that the word 'shareholder' covers both institutions and private individuals who will have different levels of influence on a company's operations, we believe that the principles which we are enunciating should be acceptable to both.

4.6 Although the position of shareholders is different from that of trade union members, we do not accept that in respect of political donations, company directors are in a totally different position from trade union leaders. Both can influence the political process by the use of funds available to them which they do not themselves own. The move towards wider accountability in trade unions should, in our opinion, be matched by a broadening of the base of consent in companies, not just on grounds of comparability but for its own sake. A formal and retrospective notification in the annual accounts no longer seems adequate. We deal with the practicalities of obtaining shareholder consent in Section 5 below.

'Proportionality' in political giving

4.7 The third principle is that political giving should be kept in reasonable proportion. The concept of 'proportionality' is increasingly allied to that of 'principle' in the British courts. An act which is acceptable in principle may be so out of proportion that it becomes unacceptable.

Open and direct giving

4.8 The fourth principle is that political giving should be direct and completely open. No board should accept arguments which result in covert support to a political party. Secrecy in the donation of funds, or in their receipt, is inappropriate in an open society and raises suspicions about the motives of donor and recipient. Greater transparency in the system of political donations can only be healthy in its effects. It will make political parties careful to accept only those donations that they are willing to defend. It will ensure that boards will only give where it can be seen to be in the best interests of their company and its shareholders.

4.9 It follows from this principle that political payments disguised as trading items, e.g. the purchase of advertising space or subscription to a party publication, at especially high rates, or the supply of services at especially low rates, are not practices that companies concerned to be direct and open would wish to adopt.

*Paying for Politics, the Report of the Hansard Society Commission, containing its detailed recommendations, is available from the Hansard Society, 16 Gower Street, WCI.
4.10 It also follows that the routing of funds through intermediary
organisations which exist largely to pass monies to the Conservative
Party, is less defensible than giving money direct. Such donations are
generally declared, but if their routing springs from a perceived
restriction in the Memorandum and Articles of the company
concerned, it would be more straightforward to change the
Memorandum and Articles than to use the intermediary with the
excuse that a company is merely donating to a body concerned to
promote ‘industrial interests’.

4.11 There are, of course, organisations, other than political parties,
researching and campaigning on questions relevant to the political life
of the country and whose work may be worthy of support in its own
right. But those organisations which exist in whole or in part as a
conduit to pass money to a political party, are in a special category.
The business leaders who gave us their views were overwhelmingly of
the opinion that a company which is confident in the propriety of its
donation will and should make it directly to the political party of its
choice.

4.12 By the same token companies which make donations openly should
not be threatened or penalised for so doing, e.g. by local authorities of
a different political complexion with whom they do business.

5. Suggestions on best practice

5.1 Before making our recommendations on ‘best practice,’ we should
explain three options that we have considered but, despite
considerable discussion, have decided not to include in our
proposed code.

Should shareholders be allowed to contract out?

5.2 We considered the possibility of shareholders being allowed to contract
out but have rejected it. There are both conceptual and practical
reasons for taking this view. The conceptual reason is that if a
donation can be justified as being in the best interests of the company
and of its shareholders, it should be treated as a legitimate business
expense: not so much money removed from the shareholders as
money spent properly on their behalf to improve the ultimate value of
their shares. The difficulty of this argument is that a parallel argument
could be adduced in respect of trade unionists who wish to contract
out of the political levy when the political fund has been specifically
approved by members generally as in the interests of the trade union.
This parallelism applies even though the fund is composed of
individual contributions as opposed to assets. It is quite as
objectionable in principle that shareholders should be compelled to
support political parties that they oppose as it would be if trade
unionists were so compelled. There is, however, in the case of
shareholders a practical argument and this, in our view, is decisive. To
permit shareholders to contract out would require extensive
bureaucracy for little financial gain to the shareholder wishing to do
so. The administrative problem would be compounded by the fact
that, whereas a union member casts only a single vote and pays a fixed
per capita levy, a shareholder may hold any number of shares.

5.3 However the fact that, on purely practical grounds, the shareholder
cannot be allowed to contract out does have serious implications for
the way in which a company decides to make political donations. It
emphasises the importance of companies following a code of best
practice such as we recommend.

Should employees be consulted?

5.4 We have had more problems reaching a settled view on another
possibility, that employees should be consulted. The trend towards
employee consultation in progressive companies has been marked in
recent years. Prima facie, a company’s political donation would seem to
be one of those questions affecting the company’s relationship with the
wider community, and that is one matter about which some boards would wish to consult. Companies these days are required by law to take into account the interests of their employees. The discussion itself illustrates the overlapping categories and the consequent confusion into which the whole system of institutional finance can lead. An employee who is a shareholder should, in our opinion, have a voice, but what of an employee who merely shares in profits? What of an employee who is a shareholder and a worker? What of the situation where the employee is both a worker and a shareholder? What of the situation where the employee is neither a worker nor a shareholder? These are questions which need to be addressed.

5.5 While we do not go so far as to recommend employee consultation in our code, for reasons of realism rather than of principle, we would not wish to discourage employee consultation, particularly in smaller or private companies where the shares are tightly held and directors want to recognise the crucial contribution of the employees to the success of the enterprise. In this connection we should like to draw attention to those interested to the example of AIDCOM International plc which has now twice polled its employees and allocated its political contribution in proportion to their support for the different political parties.*

Should a company establish a political fund?

5.6 We have also considered the idea that companies should establish a political fund collected by means of voluntary contributions from shareholders from which boards would make political donations. This is the scheme proposed by the Labour MP, Derek Fatchett. Although this idea has attractions, we have concluded that they are superficial only. We would not wish to see companies so deeply involved in the electoral process that they become collecting agents for one party or another. We would prefer to see individual shareholders who are committed to one party or another making donations as individual members or citizens. We would not wish to see shareholders being appealed to by directors for political contributions. This would be an abuse of the relationship. Our preference is for institutions, like companies and trade unions, to be less engaged with political parties rather than more.

Recommendations

5.7 We come now to our positive recommendations for best practice.

5.8 Explicit power must be included in a company's Memorandum and Articles of Association. As we have seen in Section 2 above, a company must show that there is provision in its constitution, the Memorandum and Articles of Association, that gives it powers to make political contributions. After Simmonds v. Heffer, a company would be unwise to rely on some catch-all power of doing "all such other lawful things etc." covering a range of activities which are not expressly allowed. If a company does not have the power to make political donations but wishes to do so, that power must be specifically written into the company's constitution for approval at a General Meeting.

5.9 Donations policy should be put before an Annual General Meeting as a resolution. We recommend that where there is an intention to make political donations, the board should prepare a statement of the policy which will guide its giving in future and place that statement before the AGM to be voted upon by ballot. The policy statement should be renewed in each Parliament or more frequently if the board believed that there should be a change in policy.

5.10 Such a policy statement would indicate why the board considered it to be in the best interests of the company to make political donations, and what benefits, direct and indirect, such donations would be designed to achieve. It would therefore meet the requirements of the law as well as the needs of the shareholders for consultation.

5.11 Specific donations should be approved in advance by the Annual General Meeting. The policy statement outlined in 5.9 and 5.10 above may be felt to provide a proper balance between shareholder consultation and board freedom, in that it gives a board freedom during the year to make donations consistent with that policy and the opportunity for the shareholder to query at a subsequent AGM whether a political donation has been consistent with that policy, or
indeed whether there has been a failure to make a donation that would have been consistent with that policy. It would not therefore impede a company’s freedom to make a donation at a General Election which fell, as it generally would, between two AGMs.

5.12 However some boards will undoubtedly wish to seek shareholder approval for specific donations within the policy. This might be effected on the lines suggested by Michael Pinto-Duschinsky by polling shareholders to see to which party their proportion of political giving was to be devoted.*

5.13 More probably the board would include a resolution, with the AGM papers, of the donations to political parties that it proposed to make and poll its shareholders on whether to proceed.†

5.14 Political donations should be kept in proportion. The implementation of this principle can only be a matter of good practice since it assuredly does not lend itself to legislation. We suggest that companies should make it plain to the parties to which they intend to donate that their combined support should never amount to more than a minority part of the party’s central income. If each company was to bear this criterion in mind, the excessive dependence on institutional finance might be reduced and parties encouraged to raise more money from their individual membership.

5.15 We further suggest that companies in making their own decisions should retain a sense of proportion, not only in relation to their own size and profitability, but to the share of the recipient party’s income represented by the donation. This is already true of the vast majority of companies who donate to the Conservative Party. It is the small

*“Legislation could be introduced to amend the rules for political levy funds and for political payments by companies. Under such a law: (1) Contracting out would be retained. (2) Each year union members liable to pay the political levy (that is those who had not contracted out) would be given a ballot form on which they could name the party or organisation to which they desired their portion of the political levy to be devoted. Union leaders would be committed to allocate money to different parties according to the proportion of votes cast in such a ballot. A share of political levy funds would go only to those organisations or parties receiving a minimum proportion of the total votes cast. (3) There would be a parallel system for companies. Under such a scheme, companies could make political contributions only if sanctioned to do so by an initial ballot of a majority of shareholders. Once this hurdle had been overcome, individual shareholders would be given each year the right to nominate the party or organisation to which their proportion of a company’s political giving was to be devoted. (The relevant form could be included with the notice sent to all shareholders at the Annual General Meeting.) It should be noted that a contracting-out system is not being suggested for shareholders since it would present severe practical difficulties that do not exist for contracting-out of trade union levies. These difficulties stem from the fact that different shareholders possess varying numbers of shares.” Michael Pinto-Duschinsky, British Political Finance, American Enterprise Institute, 1981.

†This is currently the practice adopted by the Foreign and Colonial Investment Trust and by Barlow Holding plc.
6. Recommended changes in the law

6.1 In considering ways in which companies might improve their practice in making political donations, we have inevitably considered statutory regulation. As we pointed out earlier, all the opposition parties are committed to legislation on this issue.

6.2 Our judgment has been that we should follow our terms of reference and confine our recommendations to a voluntary code of practice which boards might want to follow. Companies already have to contend with a great deal of regulation and we believe it would be in their own interests to follow our proposed code of conduct and thus hope to avoid having further legislation dealing with political contributions thrust upon them.

6.3 We do, however, want to recommend certain changes in the law which are not so much directed at companies as designed to make it easier for them to adopt an open and principled political donations policy.

Parties should declare political donations

6.4 In common with the Hansard Society Commission, we recommend that political parties be required to disclose the source and size of all significant donations.

Parties should publish accounts

6.5 We recommend that political parties be required to publish their accounts annually in standard form. In addition, like parliamentary candidates in constituencies, they should be required to publish full General Election accounts.

New definition of the conditions of disclosure

6.6 We recommend that Section 3 (3) of the 1913 Trade Union Act, as amended, and Section 19 (3) of the 1967 Companies Act, as amended, be replaced by a new common provision defining the conditions of disclosure in the same language since, whatever the constitutional differences between companies and trade unions, the effect of their political donations is the same. The provision should be so worded as to cover all donations made for a party political purpose.

Limits on General Election expenditure by political parties

6.7 Faced by escalating costs, party treasurers are likely to become even more exigent in their efforts to raise donations to meet those costs.

6.8 However, the political parties should be ready to look at areas where expenditure is running at an unnecessarily high level and cut back. The most obvious example of this is General Election expenditure. Each party feels bound to respond to competitive pressure to conduct voter research, to advertise, and to put an expensive leadership bandwagon on the road. Yet, and in our view correctly, the expenses of individual party candidates are very tightly controlled by law. It is surely an anomaly that the constituency elections should be controlled, precisely to prevent the abuse of high spending in the electoral process, whilst expenditure on national elections is unrestrained except by the capacity of the parties to beg the money.

6.9 An important constraint on expenditure, and one for which the country has reason to be grateful, is the fact that parties and candidates at a British General Election, may not purchase television and radio time. Indeed, the parties receive substantial subsidies at elections in the shape of benefits in kind, free postage, electoral registration, and party political broadcasts. But for this prohibition and these subsidised aids to electioneering, demands for money from political parties would be very much greater.

6.10 We agree with the Hansard Society Commission's recommendation that there should be a statutory limitation upon election expenditure by the political parties. This would not only ensure that the competitive instincts of the parties fighting the electoral battle would be kept within reasonable financial limits, but would serve to restrain the parties' demands for funds from institutional donors.
7. Summary and recommendations

7.1 Our object has been to consider, within the legal framework as it currently exists, the development of a code of conduct for companies making political donations. Although we have made some recommendations for legislative changes, they have been limited to matters that have seemed to us closely relevant to the establishment of such a code. The code we propose is not, however, dependent on any legislative changes.

7.2 A wider-ranging survey including the consideration of more fundamental legislative changes, would have compelled us to take a view of the way in which politics as a whole are financed in this country, and of its consistency with the public interest.

7.3 On two such matters we have formed an agreed view. First, we have agreed that, if it is judged to be in their interests and in intra vire, companies should continue to be permitted to make political donations. We believe it would be both illiberal and ineffective to attempt to prevent it, and we have not been impressed by what we have heard of the practical effects of US law in this regard. We would not, in any case, therefore, have said anything more on that matter than that companies would be well-advised to consider whether their Memoranda and Articles of Association do in fact permit the making of political donations; and to remember that actions that are acceptable in principle can become unacceptable if they are disproportionate.

7.4 Second, we agree with the view expressed in the Hansard Society Commission's Report 'Pay for Politics' (1981), that the financing of the political process in this country is too dependent on money provided by institutions such as trade unions and companies. This is in part because present practice in political giving by trade unions and companies accentuates undesirably the actual degree of conflict in society.

7.5 A wider-ranging review of more fundamental changes in the system of political financing as it operates in this country, including possible legislative changes, would have led us to consider such matters as how that dependency should be reduced, and whether, in making political donations, trade unions should be required to take account of the views of their members, and companies the views of their shareholders and employees, thus mitigating to some extent the more confrontational aspects of present practice. These are questions on which each of us has views but, in making recommendations, we have, in this Report confined ourselves to our terms of reference, the elaboration of a code of conduct which we hope may be a guide to companies making political donations within the law and practice of political giving as it currently operates. It is relevant at this point, however, to refer to one recommendation which would certainly require legislation. This recommendation is, as argued also by the Hansard Society Commission, that there should be a statutory limitation upon election expenditure by political parties.

7.6 With or without legislation, there cannot be an exact equivalence between the control of political giving by companies and by trade unions.

7.7 Whereas it is possible and even likely that a majority of members of one or more trade unions voting on a political fund will reject the proposal to set one up, we accept it is unlikely that a considered policy statement by a board will be rejected by the company's shareholders.

7.8 Trade unions are required to have political funds if they wish to make political donations. But they do at least have machinery for the collection of subscriptions which makes it easy for them to collect an additional sum for the political fund. We have rejected the idea that companies which wish to make political donations should have to establish a political fund. It would be a fiction if that fund consisted simply of an allocation from the assets of the company, and it could well mean the end of open political giving by quoted companies if the only way they could do so was by setting up machinery for the collection of subscriptions from their shareholders.

7.9 Members of trade unions can contract out from subscribing to a political fund. We have rejected a system of contracting out for shareholders principally as a matter of practicality. As a matter of principle it is as undesirable for shareholders as for members of trade unions that they should be forced to give sums of money, however small, to political parties which they oppose. Nor is it a sufficient answer to say that they can sell their shares. But we have concluded that the sums of money which most shareholders would regain by contracting out would be very small and that the bureaucracy involved in operating such a system would be larger than can be justified.
7.10 Our major object in this code is to persuade boards to consider their donations policy carefully. There is not likely to be a successful challenge to the board of a company making a political donation, provided always that the donation is not disproportionate and is in accord with the stated policy of the board. Equally, once a trade union has confirmed its right to hold a political fund, there is not likely to be a successful challenge at its Annual Conference to its actual political donations.

7.11 We have agreed on the following conclusions:-

a) A decision to give to a political party is a decision distinct in kind from other decisions of management and requires special validation.

b) It is right to publish a possible voluntary code of conduct for companies making political donations, in order to encourage discussion and, we hope, to provide guidance.

7.12 We therefore make the following recommendations for the content of such a code of conduct:-

i) We recommend that validation should be by shareholders in Annual General Meeting. We are aware of one, small, company which consults its employees. We would not expect that to be a normal feature of company political giving within the present legal framework, but it does represent a precedent which some companies might wish to consider.

ii) We recommend that the board of a company wishing to make political donations should place before its shareholders a statement of why it considers such an action to be in the interests of the company, and should seek approval of that statement at an Annual General Meeting at least once during the life of a Parliament. The preparation of such a statement would compel the board to consider very seriously the interests of the company in the matter of political donations. If the policy of the board changes within the life of a Parliament, it should seek further endorsement.

Although such a statement, when approved, should be regarded as authorising political donations for the period of its validity, some companies will wish to poll on each individual donation as well. That would represent a higher level of democratic involvement by shareholders. At least two companies do this at present. In these circumstances we believe that there should still be a policy statement but this would require that, in addition, each donation should be voted on by specific resolution at the AGM.

iii) We recommend that companies which make political donations should keep them in proportion, neither giving too much in relation to their own turnover and profits, nor accounting for too large a part of a party's income. We would expect shareholders in general, and major shareholders in particular, to keep a sharp eye on the level of political giving, and to satisfy themselves that the motive is the interests of the company as a whole, and no other.

iv) We recommend that companies which make political donations should do so openly, and without the use of conduits. We also believe that more information should be more readily available about the sources of financial support for political parties, and it is right that both companies and parties should ensure that this is the case. Openness is important, not only so that the voters can be better informed, but also so that companies can themselves be better informed as to the appropriate level of political giving.

Our conclusions, like our deliberations, have been based on a conscious effort to put the public interest first. The fact that to do so has not been easy is some indication of the complexity and contradictions of the way we pay for democracy in Britain. Our hope is that we have illuminated a path which boards, who wish to be responsive to the public interest in a matter which concerns every citizen, will be able to follow.
Appendix I

Members of the Working Party

The Rt Hon Edmund Dell (Chairman)  Chairman of Channel 4 Television; Chairman of the 1981 Hansard Society Commission on the Financing of Political Parties; Secretary of State for Trade 1976-78

The Rt Hon Christopher Chataway  Vice-Chairman of Orion-Royal Bank; Minister for Industrial Development, DTI 1972-74

John Ellard  A solicitor practising in London

Sir Leslie Smith  A non-Executive Director and immediate past-Chairman of The BOC Group

Peter Smith  Public Affairs Manager of Powell Duffryn; immediate past-President of the Institute of Public Relations

Appendix II

We are very grateful to the following individuals and institutions for giving us their views

Aidcom
Aims of Industry
Mr Ronald Artus
Barlow Holdings plc
Beecham Group plc
British Institute of Management
Cadbury Schweppes plc
Conservative Party
General Accident, Fire & Life Assurance Corporation plc
Mr David Hopkinson, Chairman of M & G Group plc
Imperial Chemical Industries plc
Institute of Directors
Liberal Party
Dr Michael Pinto-Duschinsky
Social Democrat Party
Trades Union Congress
Traverse-Healy & Regester Ltd
United Biscuits plc