

## Investigation into donations to the Liberal Democrats reported as being from 5<sup>th</sup> Avenue Partners Limited

### 1. Case Summary

1. The Electoral Commission has investigated donations made to the Liberal Democrats and reported as being from 5<sup>th</sup> Avenue Partners Limited, to determine whether those donations were within the rules for political donations under the Political Parties, Elections and Referendums Act 2000 (PPERA).
  - 1.1. Enquiries concerning the donations began in May 2005 but were suspended in March 2007 at the request of the City of London Police. The Commission was only able to resume its investigation at the conclusion of the criminal proceedings in November 2008, at which time Michael Brown, the sole director of 5<sup>th</sup> Avenue Partners Limited, was convicted of theft, furnishing false information and perverting the course of justice.
  - 1.2. During its investigation the Commission has made a number of enquiries and obtained and considered a large volume of documents, including evidence used in the criminal proceedings against Michael Brown. Those documents became available to the Commission in May 2009, some time after the investigation was resumed.
  - 1.3. Having carefully examined the evidence and the applicable law, the Commission has concluded that 5<sup>th</sup> Avenue Partners Limited met the permissibility requirements under PERA, and therefore was a permissible donor. The Commission also considers that there is no reasonable basis, on the facts of this case and taking into account the relevant law, to conclude that the true donor was someone other than 5<sup>th</sup> Avenue Partners Limited.
  - 1.4. No evidence emerged during the investigation to change the Commission's previously expressed view that it was reasonable for the Liberal Democrats, based on the information available to them at the time, to have regarded the donations as permissible.

## **The donations**

The donations reported as being from 5<sup>th</sup> Avenue Partners Limited are as follows:

- i 10 Feb 2005, £100,000
- ii 25 Feb 2005, £151,000
- iii 22 Mar 2005, £1,536,064.80
- iv 30 Mar 2005, £632,000
- v 06 May 2005, £30,000 for use of aircraft for 5 days

## **2. Requirements in relation to political donations**

- 2.1. There are a number of rules under PPERA in relation to what donations can be accepted by political parties.
- 2.2. Parties can only accept donations from 'permissible' donors. A permissible donor is, in the case of an individual, someone who is registered on the electoral register. In the case of a company, a permissible donor must be registered under the Companies Act 1985; incorporated within the United Kingdom or another member State; and carrying on business in the United Kingdom at the time of the donation.
- 2.3. If a party receives a donation from an impermissible source it should return the donation within 30 days. Where a party has accepted a donation which it was prohibited from accepting, or accepted a donation despite being unable to establish the permissibility of the donor, the Commission may seek a court order that an amount equal to the impermissible donation be forfeited.

## **3. Key issues in this case**

The investigation focused on the two key issues of the case, set out below:

### **1) Was 5th Avenue Partners Limited a permissible donor?**

- 3.1. 5th Avenue Partners Limited was registered under the Companies Act 2005 and was incorporated within the UK, as required by PPERA. The issue to be determined was whether it was carrying on business in the UK at the time of the donations.
- 3.2. The evidence indicates that 5<sup>th</sup> Avenue Partners Limited undertook a number of actions consistent with carrying on business, including;

opening business bank accounts with a major high street bank, opening trading accounts with a financial services broker, contracting for staff/services and passing company resolutions. In February 2005 it deposited a substantial sum of money into one of its trading accounts, which was then used for options trading and in March 2005 the company entered into a lease for offices. During February and March 2005 it also spent substantial sums on office furniture and equipment. Some of these activities occurred shortly after the initial donations were made; a number of others were undertaken in advance of the donations.

3.3. Based on the evidence, the Commission has concluded that 5<sup>th</sup> Avenue Partners Limited met the permissibility requirements under PPERA and was, therefore, a permissible donor..

2) Was 5<sup>th</sup> Avenue Partners Limited the true donor?

3.4. The Commission considered whether there was a basis for concluding that either Michael Brown, as an individual, or 5<sup>th</sup> Avenue Partners GmbH, a company incorporated in Switzerland and which was the parent company of 5<sup>th</sup> Avenue Partners Limited, was in fact the true donor. Neither Michael Brown nor the parent company would have qualified as permissible donors under PPERA.

3.5. The Commission considers that there is no reasonable basis taking into account the facts of this case and the relevant law to conclude that the true donor was anyone other than 5<sup>th</sup> Avenue Partners Limited. The Commission looked at the relevant evidence and considered that there was no reasonable likelihood that a court would find that 5<sup>th</sup> Avenue Partners Limited acted as an agent on behalf of either Michael Brown or 5<sup>th</sup> Avenue Partners GmbH when making the donations. The Commission also considered whether company law allowed the actions of 5<sup>th</sup> Avenue Partners Limited to be treated as the actions of Michael Brown or 5<sup>th</sup> Avenue Partners GmbH. The Commission considered that there was no reasonable likelihood that a court would remove the usual protection provided by the veil of incorporation.

3.6. There is no credible evidence that any of the donations came from Michael Brown's own money rather than from one of his companies.

3.7. For three of the donations (the donations of £100,000, £151,000 and £632,000), the evidence indicates that money in relation to these came from money transferred into 5<sup>th</sup> Avenue Partners Limited by investors.

- 3.8. For the other two donations (the cash donation of approximately £1.54m and the non-cash donation of £30,000) the movement of funds was different, in that the parent company was involved.
- 3.9. The source of funds for the donation of approximately £1.54m can be traced as having originated with investments into the parent company. Funds were transferred from the parent company bank account to the UK company bank account. E-mails prior to the transfer confirmed that the transfer was for the purpose of onward transfer of those funds to the Liberal Democrat Party. The sum of €2,250,000 was transferred to 5<sup>th</sup> Avenue Partners Limited. Shortly thereafter €2,225,000 was transferred from 5<sup>th</sup> Avenue Partners Limited bank account to the Liberal Democrats. The money arrived in one of the Party's accounts on 22 March 2005 having already been converted into sterling in the sum of £1,536,064.80.
- 3.10. The Commission considered whether the transfers amounted to an agency arrangement. An agency arrangement is a form of agreement that one person acts on behalf of another. An agency arrangement would not arise purely because a holding company made funds available to its subsidiary. It is commonplace for holding companies to transfer funds to subsidiaries.
- 3.11. The Commission considered whether the transfer amounted to agency, whereby 5<sup>th</sup> Avenue Partners GmbH arranged for 5<sup>th</sup> Avenue Partners Limited to act on its behalf. The facts do not support such a conclusion. There is no evidence of an express agency agreement. Additionally, there is no evidence of a motive for the parent company to use the UK company to make the donation on its behalf. Any benefit from making the donations appeared to relate primarily to the UK company rather than its parent, which did not support a conclusion that the UK company was merely acting as a conduit for its parent. There is also no evidence that the manner of transfer of funds was intended to conceal the true source of the donation or to evade the requirements of PPERA.
- 3.12. The cost of the non-cash donation of £30,000 in relation to flights was originally met by 5<sup>th</sup> Avenue Partners GmbH. The Liberal Democrats provided documents to indicate that the cost of the donations was ultimately met by 5<sup>th</sup> Avenue Partners Limited. This evidence included an inter-company recharge invoice from 5<sup>th</sup> Avenue Partners GmbH to 5<sup>th</sup> Avenue Partners Limited and a statement from Michael Brown confirming that the cost of the flights was met by 5<sup>th</sup> Avenue Partners Limited. Whilst there was concern about the reliability of these documents there was insufficient evidence to contradict the information provided by Michael Brown and 5<sup>th</sup> Avenue Partners Limited. On the facts of this case the Commission was of the view, in relation to this non-cash donation that there was no reasonable

likelihood that a court would find that that 5<sup>th</sup> Avenue Partners GmbH was the true donor rather than 5<sup>th</sup> Avenue Partners Limited.