

KIDS COMPANY: PRACTICAL LESSONS

Welcome

Kids Company – Practical lessons: Part two

SH ∞ SMITHS

KIDS COMPANY: PRACTICAL LESSONS

Your hosts

Connect with your hosts on LinkedIn by scanning the QR codes below.



Angela Bowman
Partner, Shoosmiths
Angela.Bowman@shoosmiths.co.uk
+44 (0) 370 086 8244



Robert Nieri
Principal Associate, Shoosmiths
Robert.Nieri@shoosmiths.co.uk
+44 (0) 370 086 5549



KIDS COMPANY CASE: PRACTICAL LESSONS FOR CHARITY TRUSTEES PART 2

ANGELA BOWMAN

angela.bowman@shoosmiths.co.uk

03700 868 244

ROBERT NIERI

robert.nieri@shoosmiths.co.uk

03700 865 549

SHOOSMITHS

24TH MARCH 2022

SHOOSMITHS

KEEPING KIDS COMPANY (COMPANY NUMBER 03442083)

- Kids Company was a well-known charity, supported by central government and many celebrities, which provided support to vulnerable children and young people.
- Its charitable purposes were:
 - *“a) the preservation of health of children in need of counselling, support and therapeutic use of the arts by reason of their social or family circumstances*
 - *to undertake any other charitable activity.”*

TIMELINE

- 30.09.1997: Keeping Kids Company incorporated
- 25.02.1998: “Kids Company” (KC) entered on the Register of Charities.
- **30.07.15: Cameron Government finally signed off on £3M grant to KC, conditional on Camila B assuming ambassadorial role and another CEO being appointed and board changes etc**
- **31.07.15: KC contacted Charity Commission alerting it to an announcement that the police were conducting a criminal investigation into allegations of sexual and physical abuse within the charity. The investigation concluded in January 2016 with no action taken.**
- **12.08.15: KC’s trustees/ company directors petition for the winding up of KC.**
- **20.08.15: commencement of winding up of KC.**
- 20.08.15: Charity Commission begins its inquiry into KC.
- October 2015: NAO report of outcome of investigation into the government’s funding of KC.
- February 2016: Public Administration and Constitutional Affairs Committee (House of Commons) investigation report.
- July 2017: Official Receiver decides to bring company director disqualification proceedings against all former trustees of KC and its founder/ CEO.
- 19.10-17.12.20: High Court hearing of director disqualification proceedings.
- 12.02.21: High Court judgment dismisses OR’s director disqualification claim.
- 10.02.22: Charity Commission concludes its inquiry into KC.

PUBLIC ADMINISTRATION AND CONSTITUTIONAL AFFAIRS COMMITTEE

FEBRUARY 2016

“Primary responsibility for Kids Company’s collapse rests with the charity’s Trustees...if the Trustees had not allowed the charity’s weak financial position to persist for so long, Kids Company would not have been so vulnerable to the impact of the allegations. The board failed to protect the interests of the charity and its beneficiaries, despite its statutory responsibility to do so...The Charity Commission’s guidance to Trustees warns that Trustees should not allow their judgement to be swayed by personal prejudices or dominant personalities, but this is what occurred in Kids Company. This resulted in Trustees suspending their usual critical faculties [in respect of Ms Batmanghelidjh’s operation of the charity]...The Chief Executive and trustees relied upon wishful thinking and false optimism and became inured to the precariousness of the charity’s financial situation.”

PACA Committee *“The collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall”*

HIGH COURT JUDGMENT FEBRUARY 2021

“...The public need no protection from these Trustees. On the contrary, this is a group of highly impressive and dedicated individuals who selflessly gave enormous amounts of their time to what was clearly a highly challenging trusteeship. I have a great deal of respect for the care and commitment they showed, and the fact that they did not take the much easier path of not getting involved in the first place or walking away when things got difficult.”

“...there were...plenty of examples of the Trustees questioning Ms Batmanghelidjh’s actions and seeking to ensure that controls were adhered to. The Trustees did not simply acquiesce. They obviously recognised that care and some sensitivity was required in dealing with Ms Batmanghelidjh, but that is far from atypical in relation to key members of an organisation. It did not prevent robust challenge, and the imposition of controls, when they considered it to be necessary.”

“...I have concluded that in all the circumstances the Trustees did not act unreasonably in taking account of an expectation of support from the government. In particular [at the relevant time] the Trustees were still genuinely, and not unreasonably, hopeful of substantial additional statutory funding being found...”

CHARITY COMMISSION INQUIRY FEBRUARY 2022

- *“Official report criticises former trustees of Kids Company”*
- *“The Charity’s repeated pattern of failing to make payments to HMRC when these were due and failure to make payments to workers on time illustrates the financial difficulties that the charity was in and the failure to manage these effectively. This repeated failure was mismanagement in the administration of the Charity by its trustees.”*

JUDICIAL REVIEW OF CHARITY COMMISSION'S DECISION? MARCH 2022

- On 10 March 2022 it was reported that Camila Batmanghelidjh has taken the first step in her legal challenge against the Charity Commission' decision following its inquiry into the defunct charity.
- Her lawyers have sent a “letter before claim” ahead of making an application for judicial review.
- CB said she was particularly unhappy that the Commission's report relied heavily on an earlier investigation by MPS (PACAC report), which she described as “*very flawed*”.
- The Commission's inquiry decision (23 pages) contains 2 paragraphs referencing the PACAC Report.
- The Commission interviewed 22 people (47 hours of witness evidence), examined over 167 boxes of documents, 96 filing cabinets and had access to 5000,00 electronic documents.
- The test to meet in judicial review proceedings: is the decision so unreasonable that no reasonable authority could ever have come to it?

HOW CAN CHARITIES LEARN FROM KIDS COMPANY?

SUCCESSSES

- Children-focused
- An effective campaigner: “*Enough is enough*” – The Centre for Social Justice (June 2014):
 - “*Our evidence paints a scandalous picture in terms of the lack of care and support and, in some cases, protection that many receive from statutory services. Countless numbers of abused, neglected despairing and traumatised children and young people are being spectacularly failed by some statutory services.*”

SUCSESSES

- A very effective fundraiser:
 - “Creative” philanthropists
 - “Narcissistic” philanthropists

“As a strong female I knew my role was to shut up and get the money for the kids. I shut up more than was good for me. Had I had a handbag, I would have knocked it over their heads, Instead I survived by imagining the evil deed and giggling to myself.”

ISSUES FOR THE WIDER SECTOR (CHARITY COMMISSION INQUIRY FEB 2022)

- The importance of checks and balances, and the right blend of skills and knowledge, in charity boards
- Identify and balance the risks associated with innovative operating models (“*to look after children and raise money to cover the costs*”) and evidence the benefits.
- **The role of financial planning and reserves policies**
- **Considerations when charities grow**

3. THE ROLE OF FINANCIAL PLANNING AND RESERVES POLICIES

- Reserves (Camila is a risk-taker)
- *“If the Charity had greater levels of reserves it may have been able to wind up in a more orderly fashion or merge with another charity”* (Charity Commission 2022)

–v–

- High Court 2021: *“The decision to prioritise spending on charitable objects rather than to build reserves is one that, in my view, could reasonably be reached.”*
- Core costs – explain why these need to be paid (ties in to measuring impact to explain the value charities deliver)
- Discipline of having to explain reserves and fundraising policy in Trustees Annual Report
- Routinely document board decisions (a common criticism levelled at charities)

4. CONSIDERATIONS WHEN CHARITIES GROW

- KC annual income grew x 10 in less than 10 years: £2.4M > £23M
- While some trustees had previous experience at other charities and in business, in the Inquiry's view the charity would have benefited from recruiting someone with experience of running a large and complex charity to the board. Why is that?
- The trustees might have sought to benchmark aspects of the Charity's performance against that of other large charities operating in similar circumstances.
- Ensure the risks of growth do not outweigh the benefits.
- Reliance on a single funder or small group of funders to manage short-term cash flow issues creates a financial risk for charities. Avoid over dependence on any source of funding?
- Contingency plans (living wills?)

THE BOARD OF TRUSTEES

- Sunetra Atkinson – philanthropist (2006)
- Erica Bolton – co-founder of an arts & culture PR company (2005)
- Richard Handover – former CEO/Chair of WH Smith (2005)
- Vincent O'Brien – accountant with 40+ years in the City (2007)
- Francesca Robinson – Exec chair of recruitment consultancy plc (2006)
- Jane Tyler – Former partner in City law firm (2007)
- Andrew Webster – senior HR executive (2013/14)
- Alan Yentob – BBC Creative Director (2003)

BUT DID KIDS COMPANY WANT TO GROW?

Home Office review of Kids Company [date?]

- *“Kids Company is pioneering a radically new approach to tackling social inclusion. The model is so powerful in its central philosophy and practice that the view could be taken that it merits more than a mention in the annals in social care. Kids Company’s core philosophy has much to teach other initiatives and its experience has wider implications for the design and delivery of children’s services. In an ideal world, every neighbourhood should have a Kids Company.”*

BUT DID KIDS COMPANY WANT TO GROW?

- *“After years of being passed from department to department and promised a solution that never came, I was growing assertive. There was a reason for the firmness. By 2013, the philanthropists who supported Kids Company were getting fed up. They had been happy to fund a charity they saw as an innovator, but seventeen years down the line they were tired of covering up for government failure. They could also see that we were overwhelmed by the level of need. For the first time Kids Company had waiting lists.”*

- Camila Batmanghelidjh “Kids” (2017)

WHAT PRACTICAL POINTERS CAN TRUSTEES TAKE AWAY?

PRACTICAL POINTERS

- The difference between a non executive director and a charity trustee: the burden of ultimate control.
- Sub-committees, advisory groups and shadow boards as talent pools
- Introduction into governance of those who the charity serves.
- Limited terms of office (general rule)
- Retaining “corporate knowledge” – patrons, presidents and ambassadors
- Trustee yearly appraisals
- Living in the “now” to achieve charitable purposes and to show this: limited terms of office for trustees (chairs); turning clubs into teams - getting comfortable with being uncomfortable and continually asking “*What would happen if we did not exist?*” “*What are we doing and why?*” DAY 1.

PRACTICAL POINTERS -2

- Board minutes which explain why certain decisions have been reached (use of decision-making matrix)
- *“What’s not written down didn’t happen.”*
- Is there a way of extending the shelf life of board minutes – for use in Trustees’ Annual reports?
- Measuring impact with standard data – Pro Bono Economics. Levelling Up Taskforce.
- TARs and accounts filed way before 9/10 months following year end (to tie in with AGMs)?
- Changing the charity narrative- e.g Groundwork Greater Manchester volunteering
- Collaboration with other charities, to scale up - [About Us - Shine Project](#) [Home - End Youth Homelessness \(eyh.org.uk\)](#)

BE MORE LIKE MICK JAGGER THAN KEITH RICHARDS?



Q: “WHAT IS THE SECRET OF MICK JAGGER'S LONGEVITY AS FRONTMAN FOR THE ROLLING STONES?”

A: “Mick takes performing seriously. Lots of rock and rollers get into music for the girls, the drugs and the good times, Mick got into music for the music. Being onstage is the most important thing in his world and he’s determined not to let anything interfere with his performance. The reason he’s never had to deal with serious drug addiction is because he’s ditched any substance that he felt affected his ability to perform. He exercises like a demon before tours to make sure he’s fit enough to deliver onstage. His jogging regime is apparently intense and people half his age struggle to keep up with him.

“Jagger is the greatest front man in rock and roll because that’s a title that means something to him. Being onstage fronting the Stones is something that seems to give him a huge amount of pleasure and give his life meaning.”

Quora - 2020

FURTHER WATCHING

[BBC Camila's Kids Company The Inside Story - YouTube](#)

QUESTIONS

