



PRESS SUMMARY

Re KEEPING KIDS COMPANY [2021] EWHC 175 (Ch)

Note: This summary is provided to assist in understanding the court’s decision. It does not form part of the reasons for the decision. The full judgment of the court is the only authoritative document.

Mrs Justice Falk

The defendants in these proceedings are individuals who were directors of Keeping Kids Company, better known as “Kids Company”, together with its CEO, Camila Batmanghelidjh. Kids Company was a well known children’s charity that went into insolvent liquidation on 20 August 2015. By the proceedings, the Official Receiver sought to disqualify the defendants from acting as directors or being involved in the management of a company, pursuant to section 6 of the Company Directors Disqualification Act 1986.

In order for section 6 to apply in this case the court would need to satisfy itself in respect of each of the defendants that their conduct made them “unfit to be concerned in the management of a company”. In addition, in relation to Ms Batmanghelidjh there is an additional “threshold” question because she was not appointed as a director of Kids Company. In order to make a disqualification order against Ms Batmanghelidjh the court would also need to satisfy itself that she was a “de facto” director. A de facto director is essentially someone who occupies the position of a director in practice, even though they are not formally appointed as one. Only if Ms Batmanghelidjh was a de facto director would it be necessary to decide whether she was “unfit”.

The allegation against the defendants was framed as a single allegation of having “caused and/or allowed Kids Company to operate an unsustainable business model”. The allegation was that the business model was unsustainable without material change from no later than 27 September 2013, that by no later than 30 November 2014 failure was “inevitable without immediate material change”, and furthermore that the defendants knew or ought to have known about the unsustainability of the model.

The allegation of operating an unsustainable business model was elaborated on by a number of matters relied on by the Official Receiver. These included criticisms of Kids Company’s demand led model, inadequate governance or control (in particular financial control), failing to build up reserves, and failing to plan for increasing risk as the business and client base grew. There was a particular focus on the cash flow difficulties that the charity had faced, in particular its reliance on loans and on what were said to be overoptimistic expectations about income, and delays in payments to creditors.

It is important to note that there was no allegation of dishonesty, bad faith, inappropriate personal gain or any other want of probity against any of the defendants. It is also important to note that there was no allegation of inappropriate expenditure in respect of any of the individual children or young people assisted by Kids Company.

In summary, the court's decision is that the allegation is not made out against any of the directors, and they are not unfit (see the conclusions at paragraphs 874-881). In relation to Ms Batmanghelidjh, the conclusion reached is that she was not a de facto director (paragraphs 785-794), so that it is not necessary to decide whether she was unfit. However, the decision indicates that, had it been necessary to decide the question, a disqualification order would not have been made against her (paragraphs 893-897).

The court's decision is based on its detailed findings of fact. In very broad outline the court concluded as follows:

- a) Whilst aspects of it were high risk, Kids Company's operating model was not "unsustainable" in principle.
- b) Kids Company grew substantially between 2012 and 2014, both through "replication" of its London operations elsewhere, particularly in Bristol, and in response to increasing need. The level of government grant income during that period was largely stable, so the growth was funded by increased private donations.
- c) Kids Company experienced significant cash flow difficulties during the relevant period. Staff costs relating to the support it provided to young people comprised by far the most significant element of its cost base. Much lower proportions of its expenditure were incurred directly on clients ("kids costs") and on other running costs. Costs accrued broadly evenly over the year, but Kids Company's income from donations was heavily seasonal, which increased the risk of cash flow problems.
- d) Kids Company recognised that it could not continue to increase in scale to meet demand without changing its funding model. From 2013 in particular there were discussions with senior members of the government, and latterly philanthropists, about Kids Company's future funding model, and the shape and size of the charity.
- e) The funding position came under further strain during 2014. Serious difficulties became apparent from late November 2014. In response to the difficulties a detailed contingency plan was developed, discussions with the government were pursued with further urgency and additional controls on expenditure were imposed.
- f) The discussions with the government were important. As at 30 November 2014, the second of the dates relied on by the Official Receiver, the directors reasonably believed that additional funding could be obtained from the government. In any event, it was reasonable to seek to obtain clarification of the government's funding priorities as between different parts of the charity's operations before determining what, if any, radical cuts were required.
- g) A further government grant was awarded in March 2015 as discussions continued about alternative potential funding sources for parts of the operation. However, the funding difficulties continued and worsened. A restructuring plan was formulated in discussions with the government, which would have involved a further government grant together with additional private funding, in particular from certain philanthropists.
- h) The restructuring plan was agreed and the further grant was awarded. However, the charity was forced to close following sexual assault allegations which were publicised on the same day that the grant was received, 30 July 2015. The charity was exonerated following a police investigation, but by then it was too late. The decision concludes that, if it had not been for the unfounded allegations, it is more likely than not that the restructuring would have succeeded and the charity would have survived.

The decision includes discussion of the relevance of Kids Company being a charity, and it refers to the importance of ensuring that able and experienced individuals with the range of skills required by charities are not deterred from becoming charity trustees (paragraph 911). Certain recommendations are also made (paragraph 898 onwards).

12 February 2021