



Neutral Citation Number: [2022] EWHC 3261 (Admin)

Case No: CO/1616/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19 December 2022

**Before :**

**THE HON. MR JUSTICE BOURNE**

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**Between :**

**THE KING on the application of  
CAMILA BATMANGHELIDJH**

**Claimant**

**- and -**

**CHARITY COMMISSION FOR ENGLAND AND  
WALES**

**Defendant**

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**Ian Wise KC (instructed by Moore Barlow LLP) for the Claimant**  
**Faisal Sadiq (instructed by Charity Commission) for the Defendant**

Hearing dates: Thursday 8 December 2022  
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## **Approved Judgment**

This judgment was handed down remotely at 10am on 19 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## **The Hon. Mr Justice Bourne:**

### Introduction

1. This is an application for permission to apply for judicial review. It was considered on the papers by Sweeting J, who adjourned it for an oral hearing in view of the nature of certain allegations levelled in the grounds of claim.
2. The Claimant is the former CEO of Keeping Kids Company, a registered charity which provided practical, emotional and educational support to children and young adults until it ceased operating in 2015 (“the Charity”). She seeks permission to claim judicial review of a report published by the Defendant, the Charity Commission, on 10.2.22, following a statutory inquiry. The Claimant alleges that the contents of the report are irrational and/or that they are tainted by bias in the form of predetermination. The central question for me is whether any one or more grounds of judicial review are arguable and have a real prospect of success. If so, I must also consider whether permission should nevertheless be refused because there has been undue delay in the bringing of the claim. If permission is granted, the Claimant also seeks an order for disclosure of documents.
3. By the standards of applications for permission to seek judicial review, this application has necessitated the consideration of a large volume of material, and the airing of the issues occupied most of a day. For those reasons I reserved judgment, and I now set out my decision at somewhat greater length than is usual in a permission application.

### Factual background

4. The Claimant founded the Charity in 1996 and remained its CEO until 2015. The Charity’s working name was Kids Company. Its objects were “the preservation of health for children in need of counselling, support and therapeutic use of the arts by reason of their social or family circumstances”. It worked with schools and at centres in various locations, helping children with poverty, health, social care and educational issues. It received substantial sums of public money from central and local government and from schools, and philanthropic donations. When it closed, it had seven trustees.
5. The Charity experienced difficulties in early 2015. The Claimant contacted the Defendant on 21 February 2015 to inform it of issues relating to complaints from a donor on the treatment of a donation, adverse media coverage and the resignations of some senior staff. There was more adverse media coverage in March 2015. The Charity experienced difficulties with funding and cashflow and, on 27 May 2015, told the Defendant that it would have to downsize. On 23 June 2015 the Claimant told the Defendant that the Charity was having funding difficulties and that a restructure or potential closure might occur. In July 2015 media reports suggested that further Government funding depended on the

Claimant resigning as CEO and the Charity told the Defendant that steps were being taken for this. The Defendant met with the Charity on 9 July 2015 and discussed an offer of Government grant funding and the need for changes at the Charity. A further such meeting took place on 21 July 2015, now to discuss financial allegations which had been made against the Charity. The Charity's auditors began a review of the alleged financial irregularities and governance issues. The Charity received a Cabinet Office grant of £3 million on 30 July 2015. However, on 31 July 2015 it was told, and it informed the Defendant, that the Police had announced an investigation into allegations relating to sexual and physical abuse connected with the Charity. Although the Police would in January 2016 announce that they had found no evidence of criminality, the allegations obviously affected the Charity's ability to attract donations. The Charity ceased operations on 5 August 2015 and was put into compulsory liquidation on 20 August 2015.

6. There was considerable public and media interest in the case, followed by a number of public reports and proceedings.
7. On 21 January 2016, Parliament's Public Administration and Constitutional Affairs Committee published a report on the collapse of the Charity which was critical of the Trustees and also of the role played by Government.
8. Following an investigation by the Insolvency Service, on 17 August 2017 the Official Receiver applied for an order disqualifying the Charity's CEO and several of its trustees from acting as directors or being involved in the management of the company, on the basis of a single allegation that they "caused and/or allowed Kids Company to operate an unsustainable business model".
9. The judgment of the High Court on that application was delivered by Falk J on 12 February 2021 after a 37 day trial. It ran to 218 pages. She refused to make a disqualification order, finding that the allegation was not made out against any of the trustees. She ruled that the Claimant was not a de facto director but stated that, if she had been, she would not have made a disqualification order in her case either.
10. On 20 August 2015 the Defendant undertook a statutory inquiry under section 46 of the Charities Act 2011. Its scope was to examine:
  - the administration, governance and financial management of the Charity including concerns around allegations of inappropriate spending, breaches of financial controls and the conduct of the trustees and the CEO amid concerns about the future viability of the Charity;
  - any regulatory concerns arising from the investigation carried out by the OR as part of the liquidation process; and

- whether or not the trustees had complied with and fulfilled their duties and responsibilities as trustees under charity law.
11. Aspects of the inquiry were placed on hold pending the outcome of the High Court proceedings, and therefore the inquiry report was not published until approximately one year after Falk J’s judgment and more than six years after the inquiry had been opened.
  12. It is common ground that the inquiry and the High Court proceedings set out to answer different questions but that there was a substantial overlap between the factual scope of the two processes.

#### The Defendant’s findings

13. The Claimant objects to findings made by the inquiry on five topics:

##### (1) Charity records

- (a) “Whilst the inquiry was able to review substantial documentation, there were insufficient records for it to make findings in some areas. This is for two reasons. Firstly, some of the Charity’s records were destroyed at the time of the collapse. Secondly, it appears that some records may not have actually been created.”
- (b) [in the Conclusion:] “The destruction of records fell below the standards the Commission would expect from a charity”.

##### (2) The Charity’s beneficiaries

- (a) “In an interview ... the Charity’s CEO informed the Inquiry that the Charity assisted around 36,000 beneficiaries a year. ... The Commission’s understanding is that the figure of 36,000 included indirect as well as direct beneficiaries, meaning that if one child in a family was assisted the other children in that family were counted as beneficiaries, and if one child in a school class was a direct beneficiary the other children in the class were counted as indirect beneficiaries. The Inquiry considers that in the interests of transparency and to avoid misconceptions, the methodology for calculating these figures should have been clearly articulated wherever they were cited ...”
- (b) “... between January and July 2014 the top 25 beneficiaries had spent on them a total of £311,049.99 ... the Commission saw insufficient evidence of the decision making in relation to some

of these payments to be satisfied that they were justified or made in the best interests of the Charity.”

(3) Operating model

- (a) “The trustees decided to put the funds [the Charity] obtained into expansion rather than building reserves ... in the Inquiry’s view it would have been prudent for the Charity to seek to build up reserves to provide it with a financial cushion in the event of unexpected expenses or an unexpected fall in income.”
- (b) [in the Conclusion:] “Higher levels of reserves may have allowed the charity to avoid liquidation ...  
... Further steps could have been taken earlier during the charity’s period of growth to improve its financial stability ... the Commission concludes that the charity’s trustees should have taken action earlier during its period of growth.”

(4) Financial management

- (a) “... failures to make payments to HMRC, workers, and other creditors on time is, in the Inquiry’s view, evidence of mismanagement in the administration of the Charity. This mismanagement would have undermined confidence in the Charity and its management by its trustees.”
- (b) [in the Conclusion:] “The charity’s repeated pattern of failing to make payment 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 of the charity by its trustees.”

(5) The trustees and the CEO

- (a) “If some of the trustees had more experience in the areas in which the Charity was operating, they might have been better able to perform their role as ultimate decision makers by questioning the decision making of others – e.g. the trustees might have exercised greater oversight of the clinical team’s decision making if they had had the knowledge and experience to assess its decision making more effectively.”
- (b) [in the Conclusion:] “... there were some skill gaps within the trustee body”.

## Grounds of challenge

14. The Claimant contends that the inquiry report is unlawful in that:
- (1) Its criticisms of the Charity, and by implication of the Claimant, considered specifically and cumulatively are irrational because they:
    - (a) lack a proper evidential basis;
    - (b) were made following insufficient inquiry;
    - (c) reveal a lack of balance between different sources of evidence; and/or
    - (d) are insufficiently reasoned.
  - (2) It gives an appearance of bias in the form of predetermination, showing that the Defendant was determined to produce a report that was critical of the Charity.
15. In support of the second ground, the Claimant applied for an order that the Defendant disclose all documents relevant to the production of the report. When the application for permission to claim judicial review was before Sweeting J on the papers, he dismissed the disclosure application, holding that it was not necessary and that there was nothing to indicate that the Defendant has not complied with its duty of candour. That application has been renewed before me. The Defendant resists it on the merits, because the renewal is late and/or because the application is premature.

## Legal framework

16. The Defendant is constituted under section 13 of the Charities Act 2011. Section 14 sets out the Defendant's statutory objectives:
- “1. The public confidence objective  
The public confidence objective is to increase public trust and confidence in charities.
  2. The public benefit objective  
The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement<sup>1</sup>.
  3. The compliance objective

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<sup>1</sup> The public benefit requirement is defined by section 4 as the requirement for a charitable purpose to be for the public benefit.

The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.

4.The charitable resources objective

The charitable resources objective is to promote the effective use of charitable resources.

5.The accountability objective

The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.”

17. Under section 15, the Defendant’s general functions include “encouraging and facilitating the better administration of charities” and “identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement in the administration of charities”.
18. Section 46 empowers the Defendant from time to time to “institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes”.
19. Section 50 provides that the report of such an inquiry may be published.

The parties’ submissions

20. Ian Wise KC, representing the Claimant, challenges the Defendant’s report as a whole and submits that, overall, it reads or could be read as containing criticisms of the Charity and of the Claimant which are unfair. He makes that overall submission through the prism of the five controversial topics mentioned above.

*Record keeping*

21. This issue is not about the Defendant’s comments about document destruction. Rather Mr Wise submits that there was no evidence to support the proposition that any records “may not have actually been created”, and he objects to the vagueness of the words “in some areas” in the reference to there being insufficient records to make findings.
22. Falk J (from paragraph 554 of her judgment) reviewed the evidence of several witnesses to the effect that correct records were maintained, in particular of the assessment of the needs of individual clients of the Charity. Considering gaps in records, she noted at [559] that it would be highly surprising if all assessments “had been properly recorded and had found their way onto the right file by the

time the charity collapsed”. She also found it “likely that some assessments would have occurred without being correctly evidenced in writing”.

23. In its Summary Grounds, the Defendant referred to the evidence of one of 22 people that were interviewed in the inquiry, a Ms Diane Hamilton who was the Charity’s interim finance director from July 2014 to January 2015. She described two of her colleagues doing “a kind of a sample test” of the Charity’s computerised record system and finding “a lot of data missing”. She also told the inquiry that the Charity often did not create records. The example given was the distribution of gift vouchers at a Christmas event, where she had asked staff “to make sure that we noted which clients got what” but “that didn’t happen”.
24. The Claimant states that this evidence was not put to her for comment. Had it been, she would have denied it. She was shown the report in draft but since it did not give any of the details found in the Summary Grounds, that gave her no opportunity to comment on those. The disqualification proceedings had not provided such an opportunity because as Falk J found at [575], the Official Receiver had not chosen to criticise any individual item of expenditure. The Claimant also contends that Ms Hamilton had an animus against the Charity and had leaked information to the press and that her evidence should have been treated with caution.
25. Mr Faisal Sadiq, counsel for the Defendant, responds that the paragraph in the report dealing with record keeping is not unfair or unbalanced. By using the word “may” it does no more than recognise the possibility of records not having been created, a possibility which Falk J also recognised at [559] as referred to above. This was also justified by passages in the Claimant’s inquiry interview where she referred to confirming assessment decisions in emails to the trustees but could not say whether the trustees would send a confirmation back to her, and by passages in Ms Hamilton’s interview where she said that client assessment records were missing.

*The Charity’s beneficiaries*

26. Mr Wise complains about the inquiry finding or assuming that the Claimant’s figure of 36,000 beneficiaries included “indirect” beneficiaries, i.e. an implicit finding that the figure was an exaggeration. He submits that the report can be read as implying that there was impropriety in assistance given to the “top 25” clients and that the Charity’s policies were not followed. Such findings, he submits, had or would have no evidential basis and, on the contrary, Falk J’s judgment describes the Charity as maintaining robust decision making processes. He also submits that if compliance with policies was to be questioned, it was incumbent on the Defendant to identify the policies in question.
27. The Defendant in its Summary Grounds points to a statement given to the PACAC by David Quirke-Thornton, the Strategic Director for Children’s and



Adults' Services at the London Borough of Southwark and to comments in Ms Hamilton's interview.

28. Mr Sadiq submits that the report did little more than make a recommendation, based on judgment, about how a Charity should express or explain figures in documents such as annual reports. He relied on the statement of Mr Quirke-Thornton and submitted that, whilst the Claimant may not have been pleased with the Defendant's interpretation of it, it could not be said that that interpretation was irrational. In respect of the benefits given to the "top 25" and the application of the Charity's policies, Mr Sadiq submits that the report did no more than state a fact, namely that gaps in the surviving records (on which Falk J also commented) prevented conclusions from being reached. That conclusion being of a generalised nature, it was not necessary to identify the specific policies with which compliance had not been proved.

*Operating model and reserves*

29. Mr Wise submits that the inquiry's finding that the trustees "decided" not to build greater cash reserves is an unfair representation of the position as discussed in detail by Falk J, and that the criticism of that "decision" is unfair when set alongside Falk J's acceptance of the reasons why greater reserves were not set aside and her finding at [822] that greater reserves would not have enabled the Charity to survive after the unfounded allegations were made.
30. The Defendant responds that the report referred expressly to the findings of Falk J, positive and negative, and points out that Falk J also found that the Charity made a "decision" to prioritise charitable objects over reserves.
31. Mr Sadiq emphasises that the views expressed in the report, that greater reserves would have been desirable and might have enabled a more orderly winding up, are neither controversial nor inconsistent with Falk J's findings.

*Financial management*

32. Again, the thrust of Mr Wise's criticism is that the report is unbalanced, and that a finding of mismanagement evidenced by late payments to HMRC and workers does not reflect the true picture, as found by Falk J, namely that taxes were always paid until the final liquidation and that, at the point of closure, sufficient donations had been promised to the Charity to pay its bills but these did not materialise because of the unfounded allegations.
33. The Defendant responds that its report set out unchallenged facts about late payment of bills, that the issue of mismanagement of a Charity was very different from the issues which Falk J had to decide and that to characterise a pattern of late payments of bills as mismanagement was well within its discretion.

34. Mr Sadiq emphasises that in the charity context, “mismanagement” is a term of art and that judgments about it are central to the Defendant’s expertise. The test is how an “ordinary prudent man of business” would conduct his affairs. To say that late payment of taxes and fees falls short of that test is hardly controversial.

*The trustees*

35. Mr Wise submits that the suggestion that a lack of certain skills among the trustees prevented them from fully performing their duties is, similarly, unevicenced and unbalanced. By contrast, Falk J praised their abilities and their work and also described how they were assisted by a Clinical Board. The report can be read as making an implied, and unfair, assertion that improper decisions were made by staff when allocating benefits to clients and that the trustees failed to challenge such decisions.
36. The Defendant in its Summary Grounds points out that the report also made positive comments about the trustees and asserts that the criticisms objected to were in fact fairly uncontroversial observations about ways in which the Charity and the Board could have been strengthened.
37. Mr Sadiq emphasises those points and also points out, by reference to the judgment of Falk J at [580-582] that the Charity itself had plans to strengthen its Board with a view to improving its performance.

Discussion

38. I have come to the conclusion that the grounds are arguable.
39. That does not mean that the Claimant will not face high hurdles. Some findings in the report are statements of uncontroversial fact, many of the comments at least could be interpreted as anodyne and the Court will not readily interfere with a decision by an expert regulator.
40. It is nevertheless arguable that the report, read as a whole, makes or implies (or can be read as making or implying) several adverse findings about the Charity’s governance, especially in respect of decisions about the allocation of benefits to clients. If the report is so interpreted, the grounds of challenge to it are arguable. As well as interpreting the report and assessing its reasoning and its evidential basis, the Court at the final hearing will also have to consider the context in which the report was published and in which it would be read by the public, including the extent of public criticisms previously made of the Claimant which may seem unfair in the light of Falk J’s judgment.
41. My order will not narrow down the grounds. It seems to me that the issues are those identified at paragraph 14 above. Of course it remains for the parties to consider whether and how any issues could be narrowed.

42. I have considered whether to refuse permission for the second ground, of predetermination. It is the weaker of the two. It should be stressed that Mr Wise, at the permission hearing, has not alleged bad faith and I have certainly not identified an arguable case of bad faith. However, I think that the two grounds may to some degree be inter-dependent. One way of characterising the first ground is that it alleges that the report imparts a jaundiced view, and the second ground could be characterised as alleging that the Defendant approached the case with such a view. I therefore consider it right to grant permission for both grounds.
43. I do not consider that the Claimant has been guilty of any delay which should prevent a grant of permission. She took timely action under the pre-action protocol. The Defendant requested and was given an extension of time in which to respond. It was reasonable for the Claimant to consider the response before proceeding.

#### Disclosure

44. The Claimant applied for an order for disclosure of “all papers (including copies of electronically held information) held by the Defendant relevant to the production of the Inquiry Report”.
45. Whatever the other merits or demerits of the application, it is far too wide. A judicial review claim is not a public inquiry and does not involve the re-making of a public body’s decision.
46. At the permission hearing, Mr Wise acknowledged that there is no need for such a wide order. He made it clear that what the Claimant actually seeks is (1) sight of the records of the 22 interviews which the Defendant conducted and (2) any internal communications which could shed light on the question of predetermination.
47. In my judgment the application is also premature. Now that permission has been granted, it will be for the Defendant to decide what evidence to adduce and what documents to disclose pursuant to its duty of candour and the requirements of CPR Part 54 and its Practice Direction. As the Judicial Review Guide 2022 makes clear at paragraph 15.3.2, what is required to satisfy the duty after a grant of permission will be more extensive than what is required before the grant. If the interview records are capable of shedding light on the issues, and if there are internal communications which could help a Judge to decide the predetermination issue, then my provisional view is that it would be hard to see how the duty will not apply to them.
48. The parties have also indicated that they will discuss this question, and I hope that this will assist the Defendant in any decisions about disclosure. But if there remains any disagreement, the Court can resolve it in the time remaining before the final hearing. I will therefore adjourn the disclosure application with liberty

to restore, and will reserve it to myself (if available) in view of the knowledge which I have gained of the issues and the evidence.

#### Conclusion

49. Permission is granted to claim judicial review on both grounds.
50. I will invite the parties to suggest appropriate directions. This is not the type of urgent case in which expedition could be ordered but, in view of the reputational issues at stake, I shall ask the Court to list the final hearing in Easter or Trinity terms of 2023 if possible.