



House of Commons
Public Administration
and Constitutional Affairs
Committee

**The collapse of Kids
Company: lessons
for charity trustees,
professional firms, the
Charity Commission,
and Whitehall:
Government Response
to the Committee's
Fourth Report of
Session 2015–16**

**Fifth Special Report of
Session 2015–16**

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The Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/pacac and in print by Order of the House.

Committee Staff

The current staff of the Committee are: Dr Rebecca Davies (Clerk), Ms Rhiannon Hollis (Clerk), James Harrison (Second Clerk), Dr Adam Evans (Committee Specialist), Dr Henry Midgley (Committee Specialist), Ms Penny McLean (Committee Specialist), Rebecca Usden (Committee Specialist), Ana Ferreira (Senior Committee Assistant), Iwona Hankin (Committee Assistant), and Mr Alex Paterson (Media Officer).

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Fifth Special Report

The Public Administration and Constitutional Affairs Committee published its Fourth Report of Session 2015–16, *The collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall*, as HC 433 on 1 February 2016.

The Government's response was received on 8 April 2016 and is appended to this report.

Appendix: Government Response

The Government welcomes the work that the Public Administration and Constitutional Affairs Committee have done in considering what lessons can be drawn from the failure of the charity Kids Company.

As the Committee is aware, in the light of the events surrounding Kids Company the Cabinet Office has launched a detailed review of how it makes grants under section 70 of the Charities Act 2006. The review is considering the criteria used to assess risk and is developing a proposal for a new, more rigorous and probing approval process as well as greater transparency. We are now commencing a process of engagement on the new arrangements. The Department for Education is also undertaking a review of how it makes grants to the voluntary and community sector, in the light of Kids Company report.

Both the Cabinet Office review of Charities Act 2006 grants and the DfE review are feeding into the wider review of grant making, covering the whole of Government grant giving, led by the Grants Efficiency Programme. The Grants Efficiency Programme is undertaking a Government-wide review of all existing practice in relation to direct grant awards. This will critically examine the policies and practices which are applied generally when deciding to make grant awards. In addition, the Programme will deliver a new Government Grants Information System and a new Grants Centre of Expertise by April 2016. These will both contribute to our efforts to increase the efficiency and effectiveness of charity grants.

The Cabinet Office will update the Committee and the Public Accounts Committee again in the summer.

The Government has set out detailed responses to the Committee's recommendations below:

Recommendation 1:

Paragraph 11. *There are a number of safeguarding issues which have come to PACAC's attention during the conduct of this inquiry into Kids Company, most of which neither a select committee, nor the Charity Commission, nor a government department could be expected to resolve. There is therefore a strong case for statutory regulation of charities who have safeguarding responsibilities for children or vulnerable adults and we recommend that the Government considers how such regulators as Ofsted and the Care Quality Commission can assume these responsibilities as quickly as possible. (see paragraph 155). (Paragraph 41).*

The Committee raises an important issue in relation to safeguarding. Any allegations of failure to safeguard young or vulnerable people need to be taken extremely seriously.

Trustees have a responsibility to understand the work of the organisation they govern and to identify where these activities need to be regulated or inspected by an appropriate authority. The Charity Commission published guidance “Safeguarding children and young people”, which sets out how, by law, trustees of charities working with children and other vulnerable groups must promote their welfare and protect them from harm. Trustees are expected to find out what the relevant law is, how it applies to their organisation, and to comply with it where appropriate. The recent Metropolitan Police investigation of Kids Company “did not identify any failings by the charity in respect of their duty to safeguard children or vulnerable adults.”

There is a wider requirement on all staff, volunteers and contractors who come into contact with children and young people in a variety of ways, to undertake necessary checks and appropriate training including a Disclosure and Barring Service (DBS) check (previously known as Criminal Records Bureau (CRB) check).

Local authorities have overarching responsibility for safeguarding and for promoting the welfare of all children and young people in their area. They have a number of statutory functions under the 1989 and 2004 Children Acts.

Whilst local authorities play a lead role, safeguarding children and protecting them from harm is of course everyone’s responsibility. Everyone who comes into contact with children and families has a role to play.

There are stringent requirements for organisations delivering statutory social care services; applying either directly to the organisation or to the Local Authority commissioning them, and inspected by Ofsted. Inspections of Local Authority services will include the performance of organisations delivering early help, safeguarding and child protection, children in care or adoption services. There is, of course, a separate and rigorous regulatory and inspection regime for schools and early years services. Kids Company were not considered at the time, or subsequently found to be delivering any statutory services and were for the most part, not operating under contract to LAs (although they did have contracts for some services with, for example, Lambeth and Bristol local authorities). They were not therefore subject to inspections by organisations such as Ofsted or the Care Quality Commission.

Recommendation 2:

Paragraph 32. *Trustees must have ultimate responsibility for ensuring that a charity has a responsible approach to reserves but the Charity Commission must do more to help to make Trustees aware of their responsibilities in this area. We look forward to the Charity Commission’s reviewed guidance on charity reserves, and expect it will impress upon Trustees of large or complex charities their increased responsibilities in this area. (Paragraph 110)*

The Charity Commission will respond directly to PACAC on this recommendation.

Recommendation 3:

Paragraph 33. *The Charity Commission should revise its guidance to auditors, to ensure that expectations about auditors’ reporting duties under Section 156 of the Charities Act*

2011 are appropriately conveyed. Such guidance must be clearer on the circumstances in which auditors should pass on concerns about an unsustainable operating model, including an inappropriate reserves policy. (Paragraph 111)

The Charity Commission will respond directly to PACAC on this recommendation.

Recommendation 4:

Paragraph 34. *The Charity Commission should consider how it can better impress upon Trustees the need to ensure that the Board includes those with appropriate experience of the areas relevant to the charity's activities. Some Trustees must have this relevant experience, so that they can evaluate the quality of the charity's activities, and a range of skills must be reflected on the Board. All Trustees must have a responsible attitude towards governance. (Paragraph 112)*

The Charity Commission will respond directly to PACAC on this recommendation.

Recommendation 5:

Paragraph 36. *In all communications with charities regarding individual donor complaints, the Charity Commission must communicate any advice to a charity in writing, even if there has been no illegal activity on the part of a charity. (Paragraph 118)*

The Charity Commission will respond directly to PACAC on this recommendation.

Recommendation 6:

Paragraph 38. *The Charity Commission must do more to make the public aware that they can and should take their concerns about a charity to the Charity Commission. The Commission should investigate adverse media reports about a charity and encourage journalists to make formal complaints to the Charity Commission, rather than relying upon the Charity Commission to chance upon their reports. Its guidance should also urge Trustees to make donors, employees and beneficiaries aware that they should complain to the Charity Commission if they have serious concerns about the governance of a charity. (Paragraph 121)*

The Charity Commission will respond directly to PACAC on this recommendation.

Recommendation 7:

Paragraph 39. *The Treasury and Cabinet Office must address the future funding of the Charity Commission so that it can carry out its functions in the way that Government, charities and the public expects. (Paragraph 122)*

The 2015 Spending Review maintained the Charity Commission's annual budget at £20.3m per year until 2020. The Government also invested £8m over the financial years 2014/15, 2015/16 and 2016/17 for a transformation programme to enable the Commission to become a more effective and efficient regulator. The Charity Commission will shortly consult on options for its future funding.

Recommendation 8:

Paragraph 40. *In order to underline the constitutional status of the Commission's Board, the Commission should restore the proper title of its Board members, so they are known as the Charity Commissioners. This would both restore their unique status, and underline that the Chair and his fellow commissioners are jointly and severally liable for the conduct of the Charity Commission in England and Wales, just as a Chair and other Trustees should understand how they are responsible for a charity they govern. (Paragraph 123)*

The Charity Commission will respond directly to PACAC on this recommendation.

Recommendation 9:

Paragraph 44. *We concur with the Public Accounts Committee's recommendation that, at the very least, if the government decides to use special powers to grant funding, it should provide a transparent case for its decision and report regularly on the use of these powers. Ministers and government departments must deploy proven methods of assessment and co-ordinate these effectively, and exercise objective judgement when deciding whether to grant taxpayers' money to charities. (Paragraph 139)*

The Government accepts this recommendation. The Government will publish a register of all government grants. This issue was also raised in the PAC report (Recommendation 5). Our response to the PAC was as follows :

“The Government is committed to making grant-making decisions as open as possible. We will consider the best means for publishing information on grant spend, including the powers under which they are made. We anticipate that such publication will be significantly easier once the Government Grants Information System, which will record and report grant information across Government in a simple, standardised way, is launched later this Spring.”

Recommendation 10:

Paragraph 45. *When allocating funding to charities, Ministers should not risk creating the perception that they are overriding official advice on the basis of personal prejudice or political considerations. In circumstances where they disagree with official advice regarding the release of grants to a particular charity, Ministers, including Prime Ministers, should consider whether such disagreement arises from a conflict of interest. If a conflict could be judged to exist, the Minister or Ministers must recuse themselves from decision-making, including from any influence over any other Ministers making those decisions. Ministers should not allow charity representatives to exploit their access to Government in a way that may be unethical. There must be no suggestion that individual Ministers have funds under their personal control or are exercising personal patronage. (Paragraph 140)*

The Government accepts this recommendation: We are committed to greater transparency around grant making under Section 70 of the Charities Act 2006, including through publishing a new Annual Report to Parliament.

The Cabinet Office's Grants Efficiency Programme has begun consultation with departments on new standards for all grant making across Government. These standards,

available from Summer 2016, will include clear guidance to ministers and officials on how to assure themselves that any proposed grant not only represents value for money but meets the principles of financial management as set out in *Managing Public Money*.

We have already set up and are strengthening a cross-departmental New Grant Advice Panel. The panel is comprised of a team of cross Government experts, including state aid, commercial and fraud, who scrutinise prospective grant payments and provide advice to officials on how to optimise effectiveness and minimise any risk in each new grant.

Recommendation 11:

Paragraph 46. *It should be for the relevant departments to control grants to charities, not the Cabinet Office or another department that does not have direct policy responsibility for the sector in question. As the Cabinet Office is the department most closely under the Prime Minister's control, the existing structure leaves the Prime Minister exposed to the kind of pressures which Kids Company thought it could exert. (Paragraph 141)*

The Government accepts this recommendation. Virtually all grants to charities are made by individual Departments with relevant policy responsibility, by their agents, or by local government. Cabinet Office makes grants in pursuit of its policy responsibilities, including as in this case for the youth charitable sector. We are committed to greater transparency around grant making under Section 70 of the Charities Act, including through publishing a new Annual Report to Parliament.

Recommendation 12:

Paragraph 47. *Government should re-evaluate the standard process by which grant decisions benefiting charities can be made following input from a number of different departments. This review should consider the creation of an account manager to oversee all funding decisions for each charity. This would enable greater continuity and accountability than seen in the case of Kids Company, which was passed between several departments throughout its existence. (Paragraph 142)*

The Government accepts this recommendation. We will be identifying a single account manager who can ensure there is transparent information about coordination of grants given to a single charity, where the grants are individually or collectively significant. Smaller charities or other recipients may not require account managers but all departments will be able to use the new Government Grants Information System from spring 2016 to identify if more than one department is funding the organisation, prompting a discussion between departments to avoid duplication and minimise risk.

The Grants Efficiency Programme will ensure through the Grants Centre of Expertise that all the account managers are able to develop the capabilities required to develop, manage and evaluate grant funding effectively.

Recommendation 13:

Paragraph 48. *The Government should consider whether sufficient safeguards are in place to ensure that the Libor Fund is administered in line with these principles of objectivity and transparency. (Paragraph 143)*

The same principles behind good grant making apply equally to grants made from “Libor” funds. Where these grants are made under the Charities Act 2006, they will feature in the new Annual Report to Parliament.

Recommendation 14:

Paragraph 53. *We agree with the Public Accounts Committee’s (PAC’s) recommendation that the Government should undertake a fundamental review of how it makes direct and non-competitive grants to the voluntary sector. In addition to the areas the PAC recommends for consideration, we see the creation of a measurement framework for the social sector as essential to this. The use of standardised measurement tools will enable more accurate assessments of the value of activity, and enable meaningful comparisons to take place during grant bidding and monitoring. Identifying a charity’s outcomes, rather than simply its outputs, and benchmarking these in relation to other organisations in the sector should be a core part of any funding decision. (Paragraph 153)*

As the report notes this issue was also raised in the PAC report - Recommendation 1.

The Minister for Civil Society has launched a detailed review of non-competitive grants made under Section 70 of the Charities Act 2006, to improve scrutiny and transparency in grant making to the voluntary sector.

The review has focussed on five areas, with the following initial conclusions:

- (1) **Principles:** Government should start from the presumption that grants will be competed.
- (2) **Scrutiny:** If grants are issued without competition (for example in cases of emergency), there should be more prior scrutiny. Business cases need to set out clear reasons why a grant should not be competed. The Grants Efficiency Programme is already strengthening current processes so that grant funding will be subject to similar scrutiny to commercial expenditure.
- (3) **Due diligence:** The Grants Efficiency Programme is already developing a set of criteria to assess risk. The Cabinet Office will work with departments and voluntary sector representatives to optimise the effectiveness of the criteria for grants to charities.
- (4) **Evaluation:** Evaluation standards have been developed by the Grants Efficiency Programme. The Cabinet Office will work with voluntary sector representatives to implement standards for evaluation that strengthen accountability without stifling innovation and flexibility.
- (5) **Transparency:** We will publish a list of both competed and uncompleted grants made under Section 70 of the Charities Act 2006 in an Annual Report to Parliament. We are exploring the best format in which to do this. Standardised outcome measurement frameworks may not always be appropriate if a grant recipient is doing something unique or innovative, but we will use them where appropriate. The Cabinet Office will work with voluntary sector representatives to identify some good examples of such frameworks. Best practice will be promoted through the Grants Centre of Expertise online hub. In addition a register of all Government grants will be published annually by the Grants Efficiency Programme using data uploaded from departments into the Government Grants Information System.

Recommendation 15:

Paragraph 54. *We also agree with the recommendations made by the PAC that the Government should improve the way it monitors and evaluates the performance of grant-funded organisations. (Paragraph 154)*

As the report indicates this issue was also raised in the PAC report - Recommendation 3.

The Government agrees with this recommendation. We will engage with voluntary sector representatives and other grant-making experts, such as Foundations and the Big Lottery Fund, to identify good practice in this area and improve guidance for Government grant administrators.

Recommendation 16:

Paragraph 55. *If the Government is funding an organisation that provides services such as therapy or education, it must satisfy itself that these services are being delivered by people who are sufficiently qualified to be doing so. For example, a number of local authorities, amongst them Southwark Council, no longer commission Alternative Provision Education from providers that are not registered with Ofsted. Central Government should similarly consider making external inspection from the relevant regulatory body (e.g. CQC or Ofsted) a condition of commissioning, so that it can be sure of the quality of services being delivered. (Paragraph 155)*

There are pre-existing systems of inspection and regulation for any organisation providing statutory services such as therapy or education (some regimes applying directly to individual organisations, others to the commissioning local authority). Such organisations are required to register with the appropriate authority and are then subject to inspection and regulation to ensure the quality of services being delivered. Some organisations, working under contract to a local authority, will also be subject to inspection of local authority services.

Recommendation 17:

Paragraph 56. *The Government should insist that charities to which it provides grants provide legally defensible contingency plans. This would help to mitigate the risks of a charity with vulnerable beneficiaries folding unexpectedly. (Paragraph 156)*

We agree that, in the case of all but very small charities in receipt of grants, there is a strong argument for insisting on the holding of sufficient reserves. The review of grants made under Section 70 of the Charities Act 2006 by the Minister for Civil Society will consider the need for (subject to a value for money assessment in each case) a specific requirement for contingency where the charity is large and particularly where the charity is dependent on Government funding and there is a risk to the charity's purpose should the funding be withdrawn.

Recommendation 18:

Paragraph 59. *The Government should, as a matter of urgency, examine the process by which it commissions reviews to ensure that it receives the information it requires. It is essential to ensure that the commissioning process does not allow drift from the original*

scope. Consideration should be given to requiring successful contractors to outline explicitly what level of assurance on specific issues the Government will be able to take from their final report. (Paragraph 161)

The Government accepts this recommendation. The Grants Efficiency Programme is setting standards and providing training to ensure civil servants are able to determine the level of due diligence and the risk assessment required on each particular grant. This will then ensure appropriate commissioning of the information needed to assess risk, including from external sources. Crown Commercial Services are also supporting training to ensure good commercial practice in management of external commissions.

Recommendation 19:

Paragraph 60. *The Government was right to attempt to assess the governance of a charity before awarding funds. However, rather than commissioning a review of a charity's policies and processes from one of the usual outside firms, the Government should develop its own Civil Service capability in order to exercise its own judgement about whether a charity's governance, quality of decision-making, objective setting and culture are effective, and if its internal controls are sufficient. There should be particular caution towards Boards in which Trustees have held their position for more than two terms, and towards Boards where no individuals have experience in the charity's particular area of delivery. (Paragraph 162)*

The Government accepts this recommendation. The Grants Efficiency Programme is establishing capability standards for all those working in grant management across Government, including due diligence. Civil Servants in relevant teams carrying out due diligence on potential grant recipients will receive training before making recommendations for funding. Due diligence must include the strength of non-executive and executive functions.

Recommendation 20:

Paragraph 62. *The Government must not rely upon audited accounts being signed off as a going concern as any assurance that a charity is financially well-managed or well-governed. At the very least, Government must request sight of a charity's management letters, and should seek direct assurance from the charity's auditor. (Paragraph 165)*

The Government accepts this recommendation. As part of the Charities Act 2006 review, the Cabinet Office is considering what an appropriate threshold could look like above which it would be appropriate to request further checks. We are considering a range of proportionate checks that can be undertaken both as part of initial due diligence, and on an ongoing basis. These could include requiring sight of the charity's management letters, seeking further assurance from the charity's auditor, or asking the charity to provide specific financial and relevant other information as part of the grant application process. We will also move toward a requirement for comprehensive annual reviews on all grants.

Recommendation 21:

Paragraph 63. *When commissioning external audits or reviews, Government should give priority to contractors with specific experience of the relevant field (e.g. of children's services) so that meaningful benchmarking can take place. (Paragraph 166)*

The Government accepts this recommendation. Procurement specialists in the public sector are required to follow the Public Contracts Regulations 2015, when the value of the contract exceeds a certain value threshold.

The Public Contracts Regulations and the Government's core Pre-Qualification Questionnaire require suppliers bidding for contracts to provide evidence of their relevant experience of delivering similar contracts (or grants) over the past 3 years - evidence must be provided for up to three contracts which provide evidence of their technical capability within the relevant market. In addition, departments will typically frame their evaluation criteria such that the information provided must give a clear indication that the relevant bidder has the requisite specialist experience and skills for their tender to be considered. We are considering whether further guidance is needed as part of the broader Grants Efficiency Programme cross-government work.

Recommendation 22:

Paragraph 64. *We are concerned that the Cabinet Office was prepared to hand over money, on a Minister's say so against official advice, to an organisation in which serious allegations had not been fully investigated. We are not convinced by Mr Letwin's assertion that the planned changes to the charity's leadership rendered the allegations under investigation irrelevant. It was an error for the Government to release a second "final" grant to a charity with a history of financial mismanagement, and in which the new Trustees and, as yet unidentified, permanent CEO had not yet proved their competence or commitment to making serious changes to the organisation's ethos and practices. We recommend that in future no department should hand over money to an organisation in which serious allegations have not been fully investigated. (Paragraph 169)*

The Government accepts the recommendation that no department should hand over money to an organisation in which serious allegations have not been fully investigated.

Ministers carefully considered the particular circumstances surrounding Kids Company.

Ministers were not aware of the allegations relating to safeguarding of children when the money was released (and the police have subsequently closed their investigation of these allegations on the basis that no evidence had been found to justify referral for charging to the Crown Prosecution Service).