RUNNING WITH subsidiaries

SIR RODNEY WALKER and **MIKE HUDSON** relate the governance development that has taken place at London Marathon Charitable Trust and its much larger events company subsidiary

In 2016, Age UK faced a storm of criticism when its subsidiary was accused of charging elderly people above market rates for electricity and gas. In 2018, Motability took a reputational hit when its subsidiary was found to be paying its senior executives salaries that were deemed “totally unacceptable” by the Treasury Select Committee. In 2020, a Charity Commission report on a failing RNIB subsidiary led the Commission chief executive to say “this is one of the worst examples we have uncovered of poor governance having a direct impact on vulnerable people”.

London Marathon Events is a world-leading mass participation organisation. It is a subsidiary of the London Marathon Charitable Trust, a comparatively small grant-giving charity which is the sole shareholder of its large, powerful and highly successful subsidiary.

This is the story of the journey taken by the charity and the events company to ensure that they manage their relationship tightly and work together to achieve maximum impact.

History

When Olympic steeplechase medallists Chris Brasher and John Disley co-founded the London Marathon in 1981, they also created the charity to ensure that the profits of the event could always be passed to the Trust. The funds were to be used for grants to provide sports facilities and to inspire people to become or remain active. To get the event off the ground, relevant public authorities were given powers to appoint trustees of the charity and directors of the events company.

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The marathon became a global success. The events company delivers one of the world’s top six marathons, has helped to raised more than £1.1bn for charitable causes, and has gift aided more than £100m to its parent charity. By 2019 the events company had a turnover of £40m and the charity distributed £7m per annum.

The events company had also created and delivered RideLondon, the world’s greatest festival of cycling, and Swim Serpentine. This success led to growing debate between the events company and the charity about responsibility for managing risks and where key strategy decisions should be taken.

There was also a debate about whether some charitable aims, such as encouraging participation among minority groups and inspiring activity in schoolchildren, might be more effectively delivered by the events company with a concomitant reduction in profits donated to the charity.

These debates coincided with publication of new Charity Commission guidance on charities with subsidiaries, which clarified that trustees were responsible for oversight of subsidiaries’ activities, financial controls, risks and reputation. This brought home the need to change the governance for the charity which was structured and staffed to make grants.

The governance review

Towards the end of 2019, the Trust hired consultants to produce terms of reference for both organisations. Early discussions identified the need for a more wide-ranging review. This found widespread agreement that both boards were too large, no longer needed their members appointed by other organisations, and needed to recruit specific skills and experience, and become more diverse.

It also found diametrically opposed opinions on some issues; for example, the need for greater integration or more separation of the two organisations.

Having understood their responsibilities for oversight of subsidiaries, trustees and directors wanted clearer direction on what trustees expected from the subsidiary and how its performance should be governed.

Implementing the changes

The review led to the establishment of a governance review group with members from both boards, facilitated by the consultants. The remit was to develop and agree a carefully sequenced action plan to address the most pressing issues identified and support implementation. The plan had five strands:

1. To restructure the events company board.
2. To find a successor for the retiring chair of the events company.
3. To strengthen governance support capacity in both organisations.

4. To establish a legally binding operating agreement between the two organisations.

5. To develop a high-level Strategic Framework to guide decision making.

Underpinning these interconnected strands was a need to maintain the good relationships that existed between the many people who had a stake in the ambitious change programme.

A bold decision was taken to restructure the events company with a unitary board comprising the chair (who would also be a trustee of the charity), four executive directors and six non-executive directors (NEDs), one of whom would also be a charity trustee. Eight directors of the subsidiary agreed to stand down to create a smaller board with space for the executive directors. Following agreement to the structure, a new chair for the events company was appointed using external recruitment consultants.

The chief grants officer was a driving force behind the whole change process, working with the consultants to draft documents and guide decision taking by both boards. Having secured agreement that trustees would appoint a director to lead the charity and a governance manager to support the governance of both organisations, she chose to pursue new ventures.

In parallel, an operating agreement was established to meet the expectations of the Commission. Agreement was also reached on a new format and schedule for the events company to report on its performance.

The Strategic Framework set out for both organisations:

- **Why** they exist (to inspire physical activity).
- **Who** for (everyone, reflecting ethnic diversity and low income and people from areas of multiple deprivation).
- **What** doing (physical activities for large numbers of people with low entry barriers and widening access to underrepresented groups).
- **Where** (across the UK).
- **How** (combining the scale of the events company and grant funding to maximise charitable impact).

Outstanding issues

The foundations for stronger governance were established by mid-2022. However, two issues were still outstanding. First, the charity board needed to address its skills and diversity. The board consisted of a combination of nominated members appointed by bodies with a direct interest in the marathon and independent members. At the time of the review there were five nominating members, including the Local Government Association, Sport England and London Councils, and five independent members. UK Athletics and the London Mayor also had the power to appoint board members but had not recently taken up that option.

The charity therefore had limited flexibility to increase its diversity as half its members were appointed by other organisations. Changing the arrangements for appointing trustees would require that the nominating organisations relinquish their right to appoint trustees and their right as the legal members of the company to dismiss the independent trustees. To complicate matters the terms of office of the four independent trustees all came to an end simultaneously in January 2023.

A further governance stocktake of the Trust was therefore commissioned, involving all the nominating organisations. Conversations were held with the leaders of each organisation to explain the predicament and chart a way forward. There were initially many different views on giving up power. Nominated organisations felt they brought many benefits including legitimacy, accountability and commitment to working in partnership.

However, most board members and senior executives felt that continuing with external bodies appointing trustees made it difficult to create a more diverse board with the necessary skills and experience.

Securing agreement

After much thoughtful and sympathetic discussion, the nominating organisations agreed to give up their power and in return were given written commitments about working in closer partnership in future. Discussions with nominating organisations and individual trustees led to agreement on a new set of articles and new retirement dates, staggered to avoid the cliff-edge. The articles established that trustees would be the legal company members and all would be independent, appointed on the recommendations of a governance committee.

The second outstanding issue was securing agreement on a more detailed group strategy to deliver the commitments of the Strategic Framework and maximise the combined impact of the work of the charity and the events company. At the time of writing, work had started with a joint boards awayday that has laid the foundations for the development of the strategy that is due to be finalised by the end of 2023.

In a further step in modernisation that reflected its changing structure and role, the trustees changed the working name of the charity to the London Marathon Foundation. G&L

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LEARNING FOR CHARITIES WITH SUBSIDIARIES

1. Establishing strong governance arrangements and clarity over roles in both the charity and its subsidiaries is an essential prerequisite for conversations about how they can work together achieve greater impact.
2. Investing time up-front to prioritise the most critical governance issues, to sequence change over a number of years and to agree how and when to involve the many stakeholders is vital.
3. Managing the boundary between charities and their subsidiaries depends on having high quality open and trusting relationships between the many trustees, board members and executives involved.
4. Charities with subsidiaries need to have a clear strategic framework (the why, who, what, where and how) within which their subsidiaries can operate.
5. Achieving substantial changes requires unwavering support from the key participants (particularly the chairs).
6. Having champions among management is essential to maintain the momentum of governance development.

Both boards needed to recruit specific skills and experience and become more diverse