

Trustees of Unincorporated Charities – Reducing Your Personal Liability

If a charity is an unincorporated trust rather than a limited company, the trustees could be personally liable if the charity has insufficient assets to meet a claim against it. How do the trustees protect themselves?

If you are the trustee of an unincorporated charitable trust, you may be at risk of personal liability for the charity's debts. The problem with this type of charity is that it has no "legal personality" of its own, and so no capacity to contract in its own right. Instead it is the trustees of the charity who enter into contracts with staff, landlords, and suppliers on behalf of the charity. They are also liable for tax, National Insurance and VAT payments in respect of the charity's activities. If court proceedings for negligence or unfair dismissal, are issued against the charity, the claim is served on the trustees personally in their individual names.

This situation may be acceptable so long as the charity has sufficient assets to meet any successful debt or damages claims against it. However, if the charity is insolvent its unincorporated trust form means that there is no limited liability protection for the trustees, and they would then be personally liable to make up the shortfall on any such claim against the charity.

Trustees may ask whether they would instead be protected by the indemnity provision in the charity's trust deed. The answer is no, as the indemnity depends on there being sufficient assets in the charity with which to indemnify the trustees. Nor will trustee indemnity insurance cover a trustee's personal liability for claims under contracts or leases or meet financial claims or debts arising from the charity's insolvency.

Incorporation of a charity as a limited liability company will give its trustees considerable protection from claims by third parties such as suppliers, employees or users of the charity's services.

Lancaster Parr can deal with the formation and registration of a new company for your charity with Companies House and the Charity Commission, and support your board through the incorporation process to reduce the personal risk exposure of your trustees.

Please contact us to discuss your requirements on *01749 850276* or e-mail rhpar@lancasterparr.co.uk