

## The real risk of personal liability faced by trustees of unincorporated charities

The trustees of unincorporated charities often do a fantastic job of running smaller, community based organisations (and, indeed, some larger organisations). However, when something goes wrong and the assets of the charity cannot cover the liability, they face the risk of being personally liable because of the peculiarities of the legal structure of their charity.

Unincorporated associations (and trusts) do not offer 'limited liability' to those managing the organisation in the same way a company or charitable incorporated organisation (CIO) would. Trusts and unincorporated associations lack the separate legal personality required to enter into contracts in their own name and so any contracts are entered into by the trustees of the organisation in their personal capacity, on behalf of the charity. Any breach of such a contract is therefore enforceable against the trustees, personally, though they will usually have recourse to the charity's assets to meet any liability.

### ***Chandra v Mayor* and trustees' liability as employers**

The recent case of [\*Chandra v Mayor\*](#) provides an illustration of the kind of unfortunate situation where trustees can find themselves personally liable.

The original case involved a successful claim brought by an employee against the chair of the charity for wrongful dismissal. It is well established that the courts will consider an employment contract as being between the employee and the members of the management committee (or trustee board) in place at any one time.

This means that trustees are held as ultimately responsible for an employment contract, notwithstanding that it may have been agreed by other people, several years before the trustee in question joined the organisation. This in turn can mean having to individually contribute towards a court or tribunal award, where the charity's assets cannot cover the liability.

In *Chandra v Mayor*, there was an additional question to be answered, as to whether the other committee members had to contribute to the costs awarded against the chair of the charity in defending the claim. The court held that, in the absence of exceptional circumstances, there was such an obligation, and the remainder of the committee had to contribute towards the costs. Again, this seems to reiterate the default position that the entire committee will be collectively responsible and liable where something goes wrong in an unincorporated charity.

### **Protecting against personal liability**

The first step is to carry out some initial due diligence to establish what risks the organisation faces and how those risks may fall on the trustees. As set out above, it will generally be the trustee board (those with control and management of the administration of the charity) that risks personal liability, although depending on the constitution of the organisation and the particular contracts/ relationships they have entered into, it is possible for the wider membership to become implicated as well.

Trustee indemnity insurance and public liability insurance products are clearly an option to try and cover off some of the risks. Many, particularly smaller, organisations are happy to rely on these products as a form of risk management. However, there are a range of financial risks for which insurance is generally not available. For example, liability under employment contracts, commercial agreements or a lease.

Organisations which identify these risks should consider incorporating their organisation – i.e. becoming either a company limited by guarantee or a charitable incorporated organisation (CIO). These structures have separate legal personality and benefit from limited liability. So, the charity can legally enter into contracts in its own name, rather than the names of its individual trustees.

It is important that the process of undertaking any such incorporation is carried out properly and that the legal documentation appropriately addresses any potential historical liabilities of the organisation.

[Andrew Studd](#)

Partner

+44 (0)20 8394 6414

[Andrew.Studd@russell-cooke.co.uk](mailto:Andrew.Studd@russell-cooke.co.uk)

[Gareth Roy](#)

Associate

+44 (0)20 8394 6493

[Gareth.Roy@russell-cooke.co.uk](mailto:Gareth.Roy@russell-cooke.co.uk)

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