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# High Court rules that the Wedgwood Museum Collection can be used to meet the costs of insolvency

The High Court has ruled that the Wedgwood collection is not held on a special charitable trust by the Wedgwood Museum. The implications of this decision are that the Wedgwood collection, a unique range of pottery and items of cultural significance valued up to £18 million and collected over a series of decades, could now be broken up and sold off to cover the insolvent Museum's costs and liabilities.

Wedgwood Trust Museum Ltd was insolvent because it was a participating employer in the Wedgwood group pension plan and under pension legislation was responsible as the last man standing for a deficit covering the whole group. The group pension deficit was estimated at £134.7 million.

The Attorney General sought to allege that the Museum's assets (or failing that, some of them) were held on charitable trusts, so that they could not be available to meet the liabilities of the company.

The Court found that the Wedgwood collection was beneficially owned by Wedgwood Trust Museum Ltd and was held for the general purposes of the Museum as set out in its objects. The High Court ruled that there was no special charitable trust in which the Wedgwood collection was held.

In the absence of a clear formal trust declaration, evidence of the intentions of those making gifts to the company and references to restricted funds in the accounts of the company were not sufficient to provide evidence of, or create, a separate charitable trust by implication.

There are lessons here of the need to formally and very clearly document trust intentions if gifts to a charitable company are to be held on trusts requiring their retention or use for particular purposes. Original express trust documentation should be carefully stored. Copies (preferably stored electronically and properly indexed for staff access) should be made available for production to advisors wherever necessary or appropriate. Wherever appropriate, substantial trusts should be registered with the Charity Commission as subordinate or subsidiary trusts of the charitable company, and it appears that it is also sensible to provide a reasonably detailed description of such assets in accounts filed with the Charity Commission.

However, in view of the fact that the only issue in this case was effectively whether there was a trust or not, there remain unresolved questions should this type of scenario arise again. A trust arrangement does not automatically ring-fence assets from liabilities incurred by its trustees. In the present case, if there had been a trust for all or some of the assets, the question would have arisen whether some or all of the pension deficit attributable to the employees and former employees of Wedgwood Trust Museum Ltd should nevertheless be a liability of the trust.

It may be that in many cases an independent or subsidiary charitable company (taking care in the latter case that the risk of a Wedgwood scenario is properly managed) would be a better vehicle to deal with restricted gifts of this sort or to isolate wider risks. It depends on the circumstances. Contractual or other arrangements (including employment arrangements) that could give rise to a liability that puts cherished charitable assets at risk would in any event have to be carefully managed to ensure that they did not bind subsidiary companies holding those assets.

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