

Winding up unincorporated charities

A recent case involved a creditor of a charity that sought to have the charity wound up in accordance with the procedure for winding up companies outlined in the Insolvency Act 1986. In fact, the charity in question was constituted as a trust. Therefore, the attempt to wind the charity up failed.

There are two important issues that arise from this case:

1. Creditors of the charity sector, and their advisors, very often misunderstand the different legal forms that charities operate as.
2. Secondly, and perhaps more importantly, the judge commented that if the creditor had, in fact, sued the Trustees personally under the appropriate provisions of the Insolvency Act 1986 the creditor could well have been successful. The Trustees would have been subject to unlimited liability.

This case should act as a warning for all unincorporated charities to seek the protection of limited liability offered by the company limited by guarantee structure. We would advise that given the uncertainty over the time frame for the introduction of CIOs any charities waiting for the new charitable incorporated organisation (CIO) legal structure to “go live” before incorporating should first incorporate as companies limited by guarantee. There is nothing to prevent such charities ultimately converting to CIOs in due course.

Gilbert Deya Ministries v Kashmir Broadcasting Corporation Ltd [2010] High Court of Justice, Chancery division, 9 June 2010

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