



Trustees of unincorporated charities

January 2009

An unincorporated charitable trust is not a separate legal entity - which may come as news to its trustees!

It is the trustees themselves, not the charity, who contract with suppliers, staff or landlords. The trustees are also the persons liable for any tax, rates or VAT in respect of the charity's activities.

Any legal proceedings against the charity would be issued against the trustees, and served on them personally. If a claim for breach of contract or negligence were successful, the damages award would normally be payable from the assets of the charity - but if those assets were insufficient to meet the claim, the claimant could sue the trustees personally for the balance.

Incorporation of a charity gives the charity's trustees considerable protection from claims made as a result of the charity's activities by third parties, as any such claims would normally be against the corporate body, which is a legal person in its own right.

The current method of charity incorporation is to convert a trust to a limited company, subject to the regulation of both Companies House and the Charity Commission.

In 2009 the Charity Commission plan to introduce a new form for incorporation, called the charitable

incorporated organisation (CIO). This will be a charity-specific structure, subject to regulation only by the Charity Commission, and more suited to the not-for-profit ethos of the voluntary sector than a limited company. Trustees may convert an unincorporated charity to a CIO form to reduce their personal exposure to claims.

Incorporation of a charity will not protect a charity trustee from a claim for breach of trust involving misapplication of charitable property, as the performance of trusteeship is a personal obligation. A trustee may though be protected by trustee indemnity insurance or be indemnified from the charity's assets - if they are sufficient - in respect of breach of trust liabilities properly incurred in running the charity. This would cover honest mistakes, but not wilful default, recklessness, dishonesty or gross negligence.

For further information please contact:



Rosie Parr

Associate
Head of Charities Unit

0117 902 2739

rosie.parr@burges-salmon.com

© Burges Salmon LLP 2009. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged.

Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.

Burges Salmon LLP, Narrow Quay House, Narrow Quay, Bristol BS1 4AH

Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400

Chancery Exchange, 10 Furnival Street, London EC4A 1AB

Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: Narrow Quay House, Narrow Quay, Bristol BS1 4AH.