

Court orders trustees to pay over £5,000 to former employees

18 NOVEMBER 2010

CATEGORY:
ARTICLE

A charity which provided breakfast and after-school clubs for children closed in November 2008 for financial reasons. Several employees subsequently sued the charity for unpaid wages, redundancy pay, holiday pay and pay in lieu of notice. The employment tribunal ordered the ten trustees of the defunct charity to pay three employees over £5,000 out of their own pockets. The claims of six further employees have been adjourned to a later date.

As an unincorporated charity, the Newcastle and North Staffordshire Play Council had all the advantages of a simple structure and inexpensive operational costs. However, one of the major disadvantages of not incorporating a charity is that trustees can be held to be personally liable for the repayment of any debts which they have incurred on behalf of the charity and which cannot be met from the charity's own funds.

Where a charity has taken on several employees, as the Newcastle and North Staffordshire Play Council had done, an incorporated structure will be more appropriate than a simple trust or unincorporated association. A corporate charity has a separate legal identity (and is able to enter contracts, hold property and sue or be sued in its own right) and provides limited liability for trustees.

This case comes as a timely reminder that a charity which has employees, regularly enters into commercial contracts or is the owner of any property should generally adopt a corporate structure to minimise the risk to its members and trustees.