

Our policies, templates and other documentation are provided as guides, for your charity personnel and trustees, to review and amend in order to best serve the needs of your organisation. Trustees in particular, should always be aware of any adopted policy, its wording and implications. Trustees are responsible for the charity's governance. Trust Advice exists to support trustees and charity personnel; we cannot accept any liability for any result of the use, or reliance on, these guides. **Please contact us if you would like help understanding Trustee responsibilities.**

Financial Difficulties in a Charity – A new Option?

[Co-written with Mike Reeves, Free From Debt <http://bankruptcyadvice.org.uk/contact.htm>]

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When we advise people, companies and charities at Free From Debt we always ensure that we provide a clear explanation of the options available to them, including the options in which the client takes their own action (and in which therefore no payment is made to us).

We now know of what we have been told is another option for a charitable trust (non-limited company) client, and we will be including this amongst the options we explain to clients. However we give notice that at present we have our doubts, and we will be advising clients to be very careful before relying on it. So what is this doubtful option?

In a recent R3 seminar a view was strongly advocated by a speaker that it is wrong for IPs to advise charity trustees to deal with the issue of an unincorporated registered charity in what might be regarded as the "traditional" way.

It was suggested that instead of dealing with the personal liability of the trustees head-on by the use of IVA or bankruptcy, there should be an attempt to wind up the charity as an unincorporated association having regard to section 221(1) of the Insolvency Act 1986.

If possible (it was said) a friendly creditor should if possible be persuaded to present a petition for a Winding Up Order against the charity, bearing in mind section 221(1) Insolvency Act 1986.

It was also said (although not exactly in these words) that advice to trustees of an unincorporated charity that they should address the issue of their personal liabilities rather than by a winding up of the charity would be wrong advice. Strong words!

We are left thinking that may be all very well in seeking to wind up the affairs of the charity:

- if the courts are prepared to make winding up orders, and
- if the trustees accept that the charity's affairs are for the most part to be summarily brought to an end, but...

.... how can the trustees be confident that another court dealing with a judgment summons against one of them for a charity debt, or dealing with a bankruptcy petition for a charity debt, will accept the argument that because the winding up order has been made, recovery proceedings may not also be effected against the individual trustee(s)?

If the above advice is correct why should a "friendly creditor" be needed to present a petition – surely section 221(1) must also apply to the ability of an unincorporated charity to present its own petition.

Do we say that it is a shame that section 221(4) currently disallows a voluntary winding up of an unincorporated charitable trust? and so we suggest to Policy Section at the Insolvency Service that a change may be of value?.... or is there good reason for voluntary procedures not to be available in this context?

The jury is out, and at present we can only talk through the client's circumstances, set out all the client's options, and talk about what is certain and what is not.

This is the end of the document:

We hope this has been helpful to you. Please get in touch if something isn't covered here you want to ask about. We will be very pleased to hear from you. If you would like more information, further details around membership or to upgrade your membership, visit: www.trustadvice.org.uk. Please also see our website for details of ways we can help you and services we offer.