

HOW SAFE ARE YOUR COLLECTIONS?

The Wedgwood Museums Trust Limited case has provided a stark warning

Most people would consider the safeguarding of collections and making them accessible to the public to be a primary role of a museum or gallery. However, the unfortunate case of the Wedgwood Museum¹ has prompted many museums and galleries to question how safe their collections really are.

Where a museum or gallery is run by a charitable company its collections, and all other property that it owns, is held by the company itself, unless the company is simply acting as trustee of these collections. If that charitable company becomes insolvent, its assets become available to its creditors in accordance with the regime relating to insolvency. This is what happened in the case of the Wedgwood Museum.

The court found that the Museum's collection of porcelain was available to be sold to meet insolvency costs and liabilities owed to the Museum's creditors including a pension deficit liability across the troubled Wedgwood group, estimated at £137.4 million. This decision was made despite the collection being recognised by the UK National Commission for UNESCO as having unique cultural significance to the UK.

The Wedgwood case highlighted the importance to all charities of reviewing and understanding their pension obligations. Furthermore, it emphasised the critical importance of having the right legal structure in place in order to protect and safeguard collections. Whilst this is essential for all museums and galleries it is particularly so for those that are in group structures and/or who participate in group occupational defined benefit pension schemes.

Depending upon the manner in which a collection is obtained, it may be that a collection is already protected through the terms on which it is held by the charity. For example, permanent endowment property (which in basic terms is property subject to permanent endowment trusts that allows the charity to use the income the property produces but not the capital value) cannot be held by a charitable company as part of its corporate property.

Instead, the charitable company will act as a corporate trustee of the permanent endowment property. If the charitable company is facing insolvency, the permanent endowment property would not normally be available as part of the company's corporate property to settle debts. Equally, and applying the same principle, where property is held and administered by or on behalf of a charity on separate charitable trusts for any special purpose of that charity, the property subject to the special trust is protected from events that affect the charitable company.

However, as the Wedgwood case highlighted, it is too late to wait until an insolvency event to claim retrospectively that a collection has been ring-fenced. Trustees should therefore be taking steps to protect any particularly valuable assets. A formal declaration of trust stipulating the purposes for which the asset is held should be sufficient to establish a special charitable trust which holds the gift separately from the charitable company's other assets. Where the trust is substantial and produces an income of over £5,000, it will also need to be registered with the Charity Commission as a subsidiary trust to the charitable company.

But what about property already held by the charity which is neither permanently endowed nor part of a special trust? The safest option is for the trustees to establish a completely separate

¹ *Young and another v HM Attorney General and others* [2011] EWHC 3782 (Ch)

charitable trust (of which the charitable company can be the sole corporate trustee) with its own trust deed, to register the trust with the Charity Commission, to link it to the main charitable company and to transfer the collection into that charitable trust. Once established, only liabilities which have been properly incurred in the administration of that charitable trust can be met out of the trust property. Provided that the charitable trust only contains the collection and has no employees, other property or contractual relationships, the trust structure should protect the collection if the charitable company, for whatever reason, finds itself in financial difficulty, and it is unlikely that there will be anything other than administrative charges payable by the trust for the collection.

If you would like further advice on pensions or the legal status of your collections, please contact:

Emma Moody
Head of Charities

Bond Dickinson LLP