



Institute of Risk Management - Charities Special Interest Group

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Chair, IRM Charity Special Interest Group

Introduction

In this mid year edition I am very pleased to report that we have published our 'Getting Better' guide online. The three leaf guide explains that once you have started with risk management it's useful to reflect on how far you have come and what the next level of risk maturity looks like. The easy to use Risk Maturity Matrix helps a charity to plot this and consider whether or not it makes sense to invest time and effort moving up to the next level of maturity. Please read Rebecca's article in this edition for more details.

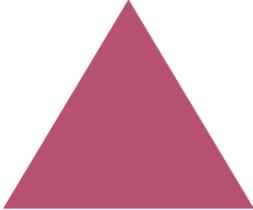
We are well underway with our next development project – Setting Risk Appetite which is a real hot topic at the moment. We had an excellent turn out for our Working Group meeting held 10th May at Arthur J. Gallagher's London office. Thanks to everyone for their contributions especially Naziar Hashemi from Crowe Clark Whitehill who has been supporting charities to achieve this for some time.

Naziar is our featured risk expert in this edition and our newest SIG team member Roberta Beaton of RNIB is our risk practitioner. Both are really interesting reads that bring out the humour required to be involved in risk management!

Also featured in this edition are some key learnings and commentary from our 10th February Risk Round Table where controversial ideas such as 'not using the word "risk"' and 'binning the risk registers' were discussed.

And finally there is an article from our newsletter sponsor Ansva/ Ecclesiastical outlining some of the changes that will affect anyone involved in insurance for charities courtesy of the Insurance Act which comes into effect 12th August 2016.

I hope you find this an interesting and light touch read and if you have any feedback please do let me or any of the other SIG team members know.


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Duty of Caring



Within the humanitarian sector the recent ruling in the Norwegian Court finding the Norwegian Refugee Council (NRC) guilty of gross negligence in the case brought against them by Steve Dennis has created much discussion over what is the legal responsibility for duty of care towards staff.

In June 2012, a group of NRC staff visited the Dadaab refugee camp in Kenya. They used a convoy of three NRC vehicles, but without an armed escort. Of the three vehicles, two were caught in a trap on leaving the camp. One national staff member was killed and four national and international staff were abducted. The abductees were successfully rescued by Kenyan authorities after four days of captivity. Steve Dennis is one of the international staff who was abducted, he was also shot in the leg during the abduction.

The discussion on duty of care is one that organisations need to have, but it is important that there is not a “knee-jerk” reaction to the ruling that makes organisations risk averse, but that they look to develop effective security risk management policies and procedures that are implemented consistently.

It is also important that an organisations’ responsibility for taking care of their staff is not driven solely by the fear of being sued. Provision of comprehensive insurance (including special contingencies insurance) may satisfy the legal responsibilities, but does it actually provide the support and care that staff need and deserve?

Legal liability is the liability of a party imposed by a court for its actions or, in some cases, inactions, and for which the courts will award pecuniary damages as a form of redress. For a successful negligence claim, it must be shown that (1) the organisation has a legal duty of care to conform to a certain standard; (2) the organisations fails to meet that standard; and (3) that staff member is injured as a direct result of the failure of the organisation to conform/meet the standards.

As with all cases, the court in the Steve Dennis vs NRC case looked at several aspects to make the link between cause and effect and thus support the finding of gross negligence.

Forseeability: a legal term for predictability.

The court found that, yes, the threat of abduction and kidnap in the area of the Dadaab camp in Kenya, was recognised and commonly known.

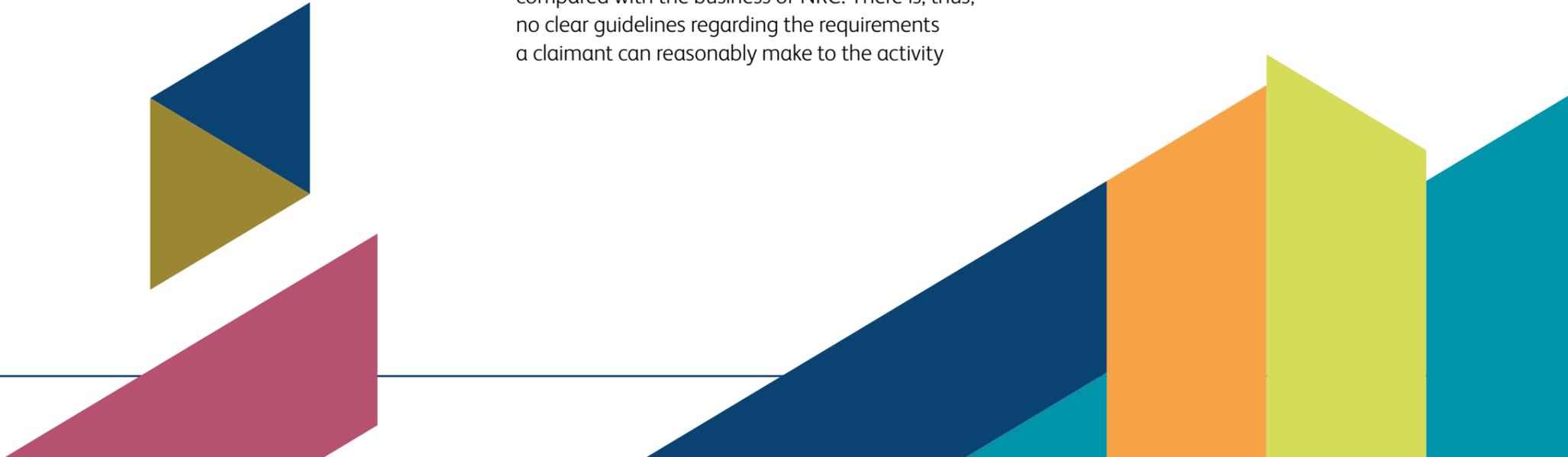
Common Standards: although the humanitarian sector does not have legally recognised standards, the court will look at what are the specific common practices applicable to the particular situation. In this case NRC argued that not using armed escorts is the industry norm. Reports from NSP (NGO Safety Program for Somalia) showed that the use of armed escorts had been strongly recommended in Dadaab since the end of October 2011, and according to NRC’s own security plan for Dadaab, updated in February 2012, the use of armed escorts was mandatory for employees of NRC.

Legal Obligation: did NRC have a legal duty of care for its’ staff, considering type of projects being implemented (humanitarian, life saving)? “The court has found no case law, or examples of legislative history and legal theory that can be compared with the business of NRC. There is, thus, no clear guidelines regarding the requirements a claimant can reasonably make to the activity

within the aid business. In light of this, the court may, at least, not see that there is any basis for applying a more lenient standard of due care for employers within the aid sector than that for other employers.”

One of the issues that the court case highlighted was the importance of what happens after an incident. Most aid workers accept that there is a certain level of risk in the work that they do, and that bad things, such as abductions, do happen. However, although the employer may not always be able to prevent or control what happens during an incident, they are fully in control of what happens afterwards. It is not only about after care, but also about demonstrating that lessons have not only been identified but implemented and staff are able to understand and be included in what happens next.

To summarise NGOs are not exempted from duty of care and liability; that duty of care, where security is concerned, is established by community standards and existing health and safety legislation; and NGOs need to consider the liability arguments when creating good practice for security risk management planning.



Rebecca Bowry

Head of Planning & Performance at Diabetes UK

Measuring your maturity



2015 was certainly a good year for 'Getting Started' with many of you clearly feeling inspired to tackle the challenges of implementing and embedding risk management. But now that we've got started we need to move on from the basics and 2016 will hopefully be the year we all 'Get Better'.

Now some regular readers may be aware that we've been promising some new guidance for a while. I'm pleased to report that this is now finally ready and you can find our new risk maturity framework and accompanying guide here: <https://www.theirm.org/knowledge-and-resources/thought-leadership/charities-and-voluntary-organisations/>

This simple framework has been designed to help you develop a plan for improving your risk management. It sets out four levels of risk maturity (conscious, developing, proficient and expert) and summarises what this means in terms of knowledge, skills and behaviours.

If you've just got started then you might class yourself as 'conscious', although in some areas you might well be 'developing' or even 'proficient'. But think about whether you actually need to be 'expert' – most of us probably don't. It's a question of matching your risk capabilities to your likely needs. But if you are 'conscious' in all aspects of risk management then you'll probably want to make some improvements. If you don't, you're likely to find that objectives and targets are missed or not met in full, simply because senior management are diverted to deal with unplanned events.

Our short guide explains how you can use the framework to assess your charity's risk capability and identify where you need to improve.

This will help you focus your limited resources on developing the right areas – why insist, for example, that all staff attend risk training if actually the problem is just that you haven't effectively communicated and promoted your risk policy?

We launched the framework and accompanying guide at our 14th June event which focused on 'Embedding risk management into planning' - more about this event will follow in our next newsletter.'



David Britton

Niche Director, Faith and Charity at Ecclesiastical.

Spotlight on – The Insurance Act



Insurance law is not exactly a hot topic on many people's minds, sometimes even within the insurance industry! However in 2016 there are major changes afoot in commercial insurance law, some of which have been debated for decades. The root of the changes is a widely held view by the industry and government that insurance contracts need to be clearer and fairer to customers, showing clear outcomes for breaches and not placing overly onerous demands on customers that allow insurers to 'get out of' claims.

Some of these changes coming into force could have an impact on how charities and third sector organisations approach their insurance policy, so whilst it is a technical subject it's one that you need to be aware of.

When is it changing?

The Act comes into effect from 12th August 2016.

What are the main changes?

The Act changes some of the key contractual framework surrounding commercial insurance contracts much of which has been in place for over 100 years. Historically insurance policies have been based on principles of 'material facts' and 'non-disclosure'. This meant that customers were expected to disclose any information that could affect their risk to underwriters, and if they failed to do so, then the underwriter could void the policy and not pay claims.

The Act looks to amend this principle, changing focus by moving to a duty of 'fair presentation of risk' by customers. Customers need to ensure any relevant or important information is provided to the insurer. Charity management teams, trustees and individuals who are responsible for arranging the charities insurance are required to disclose any information they know, or ought to know in the normal course of their business in a clear and honest way.

There aren't only demands on the customer, insurers also have to change the way they approach the new 'fair presentation of risk'. Insurers will be expected to know certain things, so that you don't need to tell them. So as well as information they already have, information which is common knowledge doesn't need to be disclosed. This also includes things which an insurer selling a charity policy would reasonably be expected to know.

If you are concerned about what the new fair presentation of risk means in reality, remember that it's designed to give a balanced and fair approach to both parties rather than catch you out! Insurers should be giving you clear guidance on what information they need at renewal to help with this, but if you have any concerns then talk to your broker or insurer for further advice.

Will insurers change the policy cover or wording?

One of the areas the Act aims to get insurers to change is around warranties and conditions. Previously an insurer may have placed a warranty on a policy, which required action from a customer, e.g. a fire alarm has to be turned on. If this wasn't complied with then the policy wouldn't be in force and no claims would be paid. However this often generated unfair outcomes for customers with claims being declined for breaches in warranties that didn't relate to the loss – for example no payment on a theft claim because the fire alarm wasn't set!

Following the Act, many insurers will remove these warranties from their policies entirely, and where there is a need for a customer to comply with a condition, they should be clearer about what the outcome will be if they fail to do so. For example the



condition may say specifically that no fire claims will be paid if the fire alarm is not set.

There are also other changes to what insurers can do when information isn't given to them. So if following a claim it arises that you failed to provide some key information that changes the risk, it may affect the claim payment. This could be information such as a large change in your income, the location of your property or a new activity you get involved in. If this information would have meant the insurer would have changed their terms if they had known about it e.g. charged a higher premium, then any claim payment could be proportionally reduced.

What do Charities need to do?

Charities should see fairer policies following the Act, and the Act should not affect insurers' renewal processes significantly. However insurers may have to gather more customer information than in previous years. Charities should therefore leave plenty of time to prepare for their renewal and ask their broker and/or insurer if they have any questions.



Alyson Pepperill

Chair, IRM Charities Special Interest Group

IRM Charities SIG Round Table Event



From the horses' mouth – your risk successes

Twelve delegates attended a special Risk Successes Round Table at the Arthur J. Gallagher London office on 10th February. I wanted to share some of the key soundbites that came from the lively interaction that ensued. I hope this will help you to be successful too!

“Our strategic plans are linked to risk management.”

“We are being asked to provide training to more and more trustees to help them understand their role and responsibilities and to highlight the link to risk management and doing their role properly.”

“There has been something of a cultural shift away from the risk list. This has probably been driven by better delegation of risk from the Risk Committee. This has certainly led to more of a conversation around risk which in turn has led to more people being interested in risk and risk management.”

“Embedding issues have arisen but we’ve managed them through good project management.”

It was incredibly heartening to hear how a good number of the delegates had succeeded in incorporating risk management into strategic planning – surely a nirvana for anyone wanting to embed risk management? More and more conversations and engagement generally seemed to be part of the key to implementing this approach, along with the necessary education of trustees and senior management.

Eureka moments were a recurring theme where suddenly there was a recognition that actually risk management should not sit at the side-lines and be added at the end through a detached process, but that

**“
We now have a new
five year strategy
with risk management
embedded into
that process
”**

actually to succeed it needed to be a part of the strategic planning process and if it was the likelihood of achieving objectives increased.

“We focus in on five key risk areas through the Audit Committee. We feel the detail is for the Committee and not the Board.”

“We have moved towards a concept of trustees taking informed decisions by setting ourselves Key Performance Indicators on the outcomes so the trustees can monitor and measure this.”

“I do wonder whether we really understand what information the trustees can have, or indeed have time to read, in order to fulfil their obligations? Maybe if trustees were paid that might make more sense?”

“Let’s not forget how little time in actual fact trustees are involved with the charity. How much work goes on outside the four Board meetings a year? How much can they do in the time allowed?”

“One route we’ve tried is putting Risk Management as the first agenda item and then saying ‘oh the following points cover this anyway’ to try to bring home how embedded risk management should be in everything and that it is not a stand-alone process.”

It was obvious that everyone recognised the need for trustees to engage with risk management and that it can be frustrating when time limitations get in the way of this. Some of the ideas about how to engage the trustees were innovative but the lack of time available was a recurring theme.

Significant issues were touched on such as whether trustees should be paid and how to shift the thinking of some to help them to understand that risk management is in effect a part of informed decision

making especially around strategy and planning which should be a key part of a trustee’s role.

“We have binned the Corporate Risk Register and now have a Risk Plan which is used to escalate problems.”

“We don’t share the risk register these days and prefer to convert people to risk management via risk based thinking rather than just running down and across a list.”

“Mind you staff turnover doesn’t help with embedding risk. At least having a Risk Register means people can stay roughly on the same page. Assuming it’s kept up to date obviously”

“It’s up to me to ‘sell’ the benefits of risk management as a way to help people prioritise and escalate issues. I don’t want to be seen as a pain but rather someone who can help and provide answers some of the time.”

Controversial or what! Some of those tasked to address risk were talking about binning the risk register? In fact a lot of this dialogue revolved around how risk is communicated and certainly a long list is unlikely to bring about a positive response unless you’re dealing with ‘detail’ people. As we’ve said before ‘know your audience and how best to engage with them’ don’t just share lists as that is unlikely to work.

The concept of risk based decision making or thinking is something that should be explored further so we included a slot from Paul Hopkin, the IRM’s Technical Director and author of Fundamentals of Risk Management (2012) in our June seminar.

Naziar Hashemi

Not for Profit Partner, Crowe Clark Whitehill

The Expert's Risk Management Journey



Naziar has 25+ years of auditing and advising charities and not for profits. In this time she has worked with a wide cross section of charities in various sectors and of differing sizes. In addition to audits, Naziar is involved in other assignments such as board effectiveness reviews, finance reviews, governance reviews and advising organisation on their risk management and assurance processes.

She has helped a number of not for profits re-invigorate their risk management processes. She has written and regularly presents on risk management including for example at the CFG 2015 Annual Conference where Naziar spoke about linking strategy to assurance to risk.

1. What do you think risk management is all about?

Risk management is about gaining an organisation wide understanding of the challenges the organisation needs to manage and the opportunities it needs to take to achieve its strategic objectives in pursuit of its mission.

A risk aware charity is one that links strategy and risk management. Ultimately good risk management is about ensuring we have identified those risks and opportunities that can impact on our strategic aims. It is also about being able to manage both risks and opportunities.

2. What is the biggest change in risk management that you have observed over the course of your career?

My career started in 1988 so the biggest change is that risk management is now seen as an integral part of good corporate governance. More recently though the increasing focus away from the detail to understanding risk as a holistic part of achieving charitable purpose. There is also greater understanding that the risk mapping process should consider both strategic and operational risks and in order for it to be truly effective it needs to be embedded at all levels of the organisation.

Successful organisations need to innovate to grow and deliver and to do that they need to take risks. There is also a greater acceptance therefore that not all the focus should not be on what could go wrong as this may mean that the charity will miss opportunities which will drive growth and create value for its stakeholders.

3. What is the biggest success you have seen risk management contribute to an organisation?

I have seen a number of success stories which have each in their own way contributed to an



Successful organisations need to innovate to grow and deliver and to do that they need to take risks.



organisation. For me though, what I have observed through the years is that discussions of risks or the challenges an organisation has to face have almost always led to a deeper understanding of what the charity is seeking to achieve.

Conversations about risk bring a great understanding and shared understanding between junior and senior managers, between senior managers and directors and importantly between directors and those in charge of governance.

The mistake is when this becomes a one-off discrete assignment rather than an integral part of business as usual. It is important to continue the conversation.

4. What words of wisdom do you have for anyone starting to think about implementing risk management?

Be patient - it never happens overnight!

Be focused – my mantra for articulating the risk is “source/effect/impact”

Be pragmatic – don't get caught up in the theory, develop an approach that suits your organisation and your people but has its foundations in best practice.

Roberta Beaton

Strategic Performance Manager for RNIB

The Practitioners Risk Management Journey



What's your name and where do you come from?

I'm Roberta Beaton and I'm Strategic Performance Manager for Royal National Institute of Blind People (RNIB). I've worked within the disability sector for over 15 years, including 10 years at RNIB within their Strategy and Performance team.

My key areas of focus include supporting the RNIB Group of charities to be well planned, to monitor our progress against the plan, and ensure that the organisation is managing both strategic and operational risks.

How did you get started in risk management?

I kind of just fell into it. At university I started working for a local learning disability charity that provided leisure activities for learning disabled adults. As part of my role it was necessary to make sure that all our activities were properly risk assessed and compliant with statutory requirements around working with vulnerable adults. This was alongside organising amazing music and art events, participating in festivals and parades and dressing up an awful lot! That role was really my first taster of risk management and thinking about anything that could go wrong and how could I avoid it.

From there my career moved into strategic planning (and to London where I'm now based) and risk management was just another part of really good planning. Over the years I've been responsible for gaining expert knowledge, designing our risk management framework, and working with people across the organisation to make risk management part of their day to day planning and monitoring.

What are your top tips for embedding risk management?

My top tip is to facilitate good quality conversations about potential risks and to move people away from the idea of just risk logging and dusting off a register every six months.

Risk management is so much more than identifying risks and periodically reviewing them. By considering what could go wrong,

the impact if it did go wrong, and how we can avoid, reduce or manage potential problems; we are in better position to avoid surprises along the way.

Simplicity is the key; we try to break down technical language into simple questions people can think about it. This has been hugely successful in my experience.

I'm not saying that frameworks and templates aren't useful (they really can be!), however, I find getting people together to consider 'what's keeping us awake at night', 'what could go wrong' and 'is there an opportunity here' has really helped people to move away from the traditional view that risk management is something you log 'to cover yourself'. Getting people together in this way leads to a broader view of risk and often results in the consideration of opportunities as well. These conversations should happen at all levels of an organisation. What I would say to any manager is not to consider risk in isolation or to go off into a dark room to write a register alone.

So my tip is to have a conversation - then fill out the paperwork.

My second tip would be to bring cake!

What achievement are you most proud of?

This is a big question – in life, in work, or with risk management specifically?

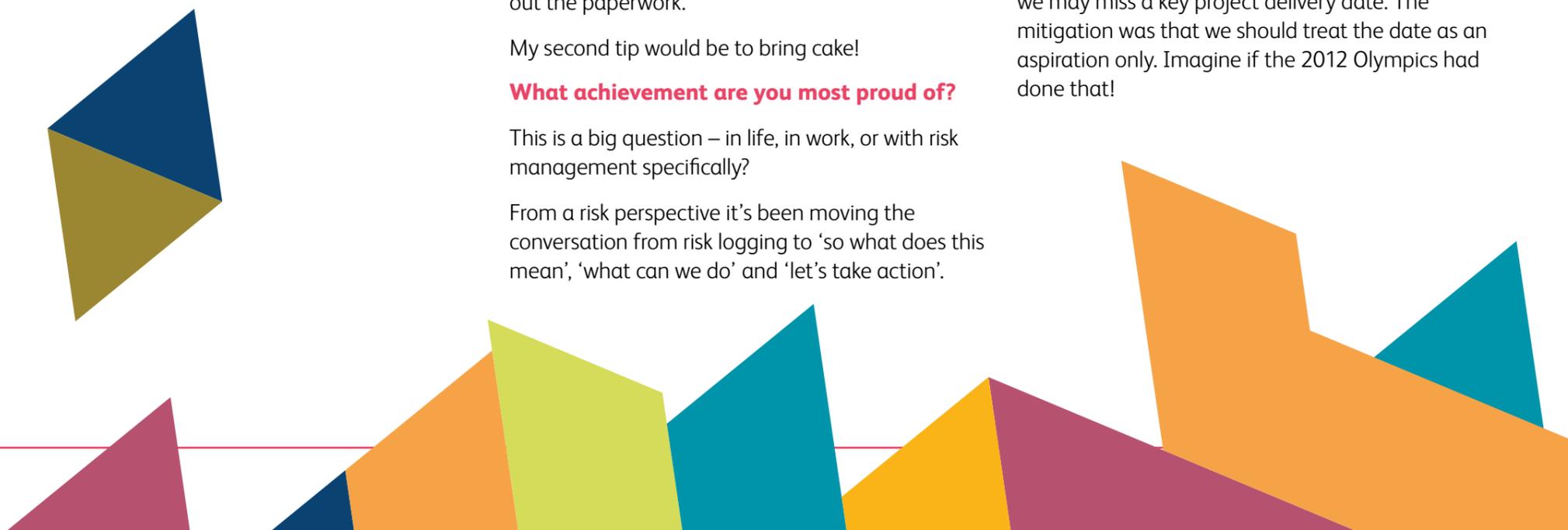
From a risk perspective it's been moving the conversation from risk logging to 'so what does this mean', 'what can we do' and 'let's take action'.

From a personal perspective it would be increasing the integration of learning disabled people into arts and leisure scene within Kingston upon Hull. Specifically being part of the team that set up specialist nightclub events for learning disabled people (because they want to dance and meet people too!), creating a 1 day arts and music festival for all types of disabled people across Hull, and establishing an improvised jazz band who played a number of local events despite their disability (we had so much fun – I also learnt I'm no great jazz artist!)

What's the strangest risk you've ever had to deal with?

Happily all the risks I've come across have all be fairly typical. The most interesting risk I've discussed was the outcome of the general election last year. We focused our discussions around another coalition or impact of a hung parliament; we hadn't really anticipated the outcome as a majority Conservative Government.

I have found some risk mitigations can be strange though. For example, I once saw the risk that we may miss a key project delivery date. The mitigation was that we should treat the date as an aspiration only. Imagine if the 2012 Olympics had done that!





IS YOUR CHARITY MAKING A GOOD JOB OF EMPLOYMENT LAW?

It's all too easy for charities to trip up over the complex business of Employment Practices Liability (EPL). Richard Lane explains why – and what you can do about it.

In many ways, a charity is a business like any other. The moment you engage directors and staff, you enter the complex and ever-changing world of employment law. Everything from paternity leave to harassment needs to be scrupulously managed. For charities, having trustees and volunteers adds an extra twist.

Woe betide the organisation that gets its employment practices wrong. People tend to be clued up about their rights as an employee. Which means you can end up in litigation faster than you can say discrimination grievance.

The consequences can be costly and time consuming. And not just in staff time and legal fees. Being dragged through courts, tribunals and the press can damage your charity's reputation and have a knock-on effect on donation income. If it's serious enough, the future of the organisation could even be at risk.

So what can you do?

Make sure every employee understands their role, the terms of their contract and what's expected of them, right from the word go. It pays to invest in clear contracts and policies, expert training and a comprehensive handbook that covers everything they need to know.

Never assume. For instance, it may seem obvious to you what discrimination is. But if it happens in your organisation and nothing has been done to define and prevent it, your charity may find itself on the wrong side of a claim. On the other hand, if your staff and volunteers are trained to understand what's acceptable and what isn't, you have a stronger defence.

It's a question of good practice

Having strong HR practices in place is essential. It's also important to have a system for dealing with any disputes quickly and effectively. With a good



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internal dispute handling system in place, you can prevent issues escalating and ending up in court – and the public eye.

It's worth remembering that if donors become aware of damaging claims against your charity the fallout for your reputation could discourage further donations. Which brings me to my third tip...

The sooner the better

Getting good HR and legal advice early on can save a great deal of heartache and money. If you can't afford to have the expertise you need to manage employment issues in-house, it pays to outsource. Experts can help you get the HR systems you need in place – and provide legal guidance if things go wrong, to help prevent a situation escalating.

It's wise to consider Employment Practices Liability insurance to help cover the legal costs of handling employee grievances too. A good specialist broker can advise you on the best choice for your needs.

It's easy to let employment practices slide when you're focused on pursuing your charity's mission. But it's worth the investment. A sound and happy ship is much better at weathering storms.



Richard Lane

Managing Director of Ansvar Insurance, specialists in the third sector.

