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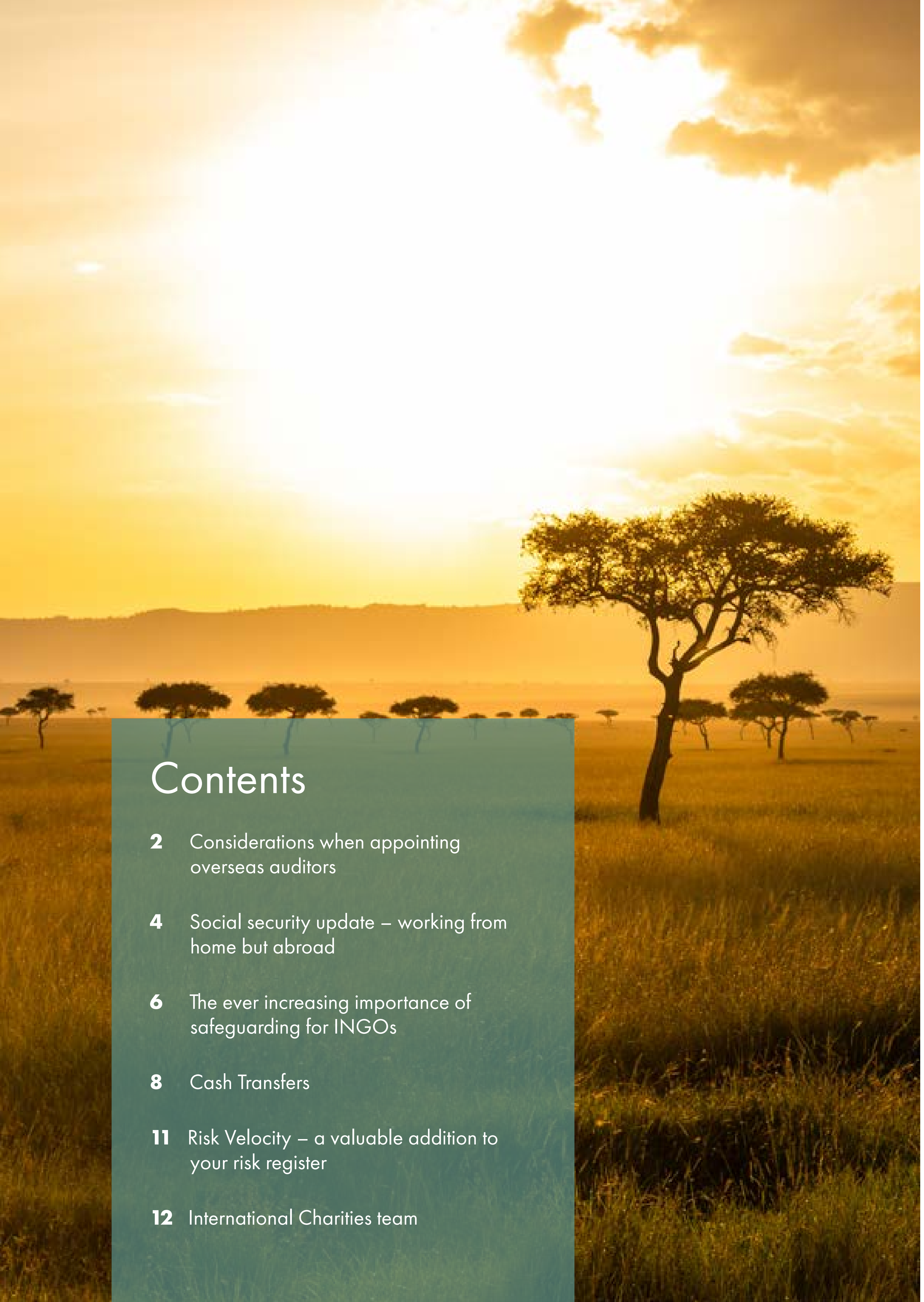
INTERNATIONAL CHARITIES BRIEFING 2022



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From the editor

Welcome to our first International Charity Briefing where we look at a number of challenges faced by international charities in the current environment.

Over recent years, the only constant has been change, and with the ongoing war in the Ukraine and the prospect of difficult economic times ahead, it is difficult to see the challenges easing anytime soon. At the same time, the needs met by international charities remain great.

To begin, Tim Bennet, Manager, reviews the key considerations to assess when appointing overseas auditors and what you must look out for.

In recent years, we have seen a significant increase in individuals working remotely overseas. Nick Bustin, Employment Tax Director, reviews the key factors to consider when an employee is working overseas in an EU/EEA country.

Safeguarding has been a significant focus area for many international charities in recent years, reflecting a number of well-publicised cases. Vikram Sandhu, Director, reflects on the ever-increasing importance of safeguarding for international charities.

One of the most common themes of questions I have received in the past year has been around making overseas payments, particularly to jurisdictions such as Afghanistan and Myanmar, where there have been significant difficulties. In this edition, I will be touching on some of the key factors for international charities to assess when they are considering making overseas payments outside of the formal banking system, alongside the recent Charity Commission guidance in this area.

A theme which crosses each of the above areas is risk, and it is important that all charities are managing risk effectively. A concept I have seen discussed more frequently by charity boards is that of risk velocity, and in our final article Andrew Roberts, Senior Manager, addresses this further.

I hope you enjoy this edition and find these articles of interest. Do feel free to let the articles' authors, me or your regular contact know if you have any questions concerning the matters discussed. I would welcome any feedback on our first International Charity Briefing and, in particular, any topics you would like us to consider for future editions.

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Considerations when appointing overseas auditors

UK charities that operate internationally face a variety of challenges. For those that carry out their charitable work using overseas branches or subsidiaries, it may be a legal requirement for those offices to undergo an annual statutory audit.

Even where there is no obligation to do so, appointing local auditors can give UK trustees an additional level of assurance over the charity's overseas activities. The Charity Commission and HM Revenue & Customs (HMRC) have increased their interest in charities with overseas activities in recent years. Trustees must be able to demonstrate how they gain assurance that charitable funds sent overseas are spent appropriately to the benefit of the charity's intended beneficiaries. The reporting from overseas auditors can assist trustees in obtaining this assurance, both in respect of the accuracy of the internal financial reporting a UK-based head office may receive from local offices, and over the processes and controls in place in the local offices.

It is important to understand the impact on the UK group audit when overseas auditors are appointed. International auditing standards have been significantly enhanced in relation to reliance on the work a group auditor is required to perform on component auditors. The relevant standard (ISA 600) has been enhanced in recent years, and as part of the appointment process, UK management should contact their UK auditors to confirm the level of reporting that is likely to be required from overseas auditors. Component auditors may charge additional fees to engage with group auditors, therefore it is important to agree the scope for this during the appointment process, so it can be factored into the charity's budgeting.

For significant components, group auditors are likely to need to hold discussions with component auditors at both the planning and completion stages of the overseas audit, require sight of management letters issued, and review audit working papers for significant areas. UK auditors may also instruct overseas auditors on how they would like the work in certain areas to be approached.

As with choosing a UK-based auditor, it is important that the appointed firm and partner have the relevant qualifications and experience to give the assurance required. Many countries have publicly available listings of registered auditors and haysmacintyre, through its membership of the MSI Global Alliance, will be able to advise. For nations that do not publish such a listing, prospective auditors should be able to provide details and evidence of their qualifications.

In some territories, appointment options may be limited. There is likely to be little that can be done about this, but it is important that trustees understand how a potential auditor ensures their compliance with the latest local and international auditing standards, and ensures their independence, including how they mitigate the risks arising from a long association with an audit client. UK management should also consider keeping a record of the related parties of directors and key staff of local offices to further ensure the independence of local auditors.

Where there is a range of potential auditors to appoint, an appropriate review policy should be implemented. This needs to find the balance between obtaining a fresh perspective on the office systems, controls, and financial reporting, whilst ensuring that audits are efficient so that unnecessary administrative time is not spent on overly regular retenders. This will be affected by the level of risk trustees associate with each overseas office, in which the quality of the audit and service provided should be considered. Different organisations apply different time periods to the appointments, and, in most jurisdictions, this will be a policy decision for the charity to take.

It is also important to consider how key findings from local audits are dealt with in the UK – for example, there should be a process by which local management letters are reported to management in the UK, and trustees of the UK charity should also be aware of key issues or findings. For larger charities with internal audit functions, the findings of local audits may also help to inform the proposed scope of internal audit work.

In summary, there are five main points to consider when appointing overseas auditors:

1. What is the level of reporting required to the group auditors, and will additional fees be payable to the component auditors for their group reporting responsibilities?
2. Does your component auditor have the relevant qualification(s) and experience?
3. Is there a range of alternative appointment options? If not, how does the potential auditor ensure their independence as auditors and their compliance with auditing standards?
4. How often should the appointment of overseas component auditors be reviewed?
5. How will key findings from component audits be communicated to, and dealt with by, the UK head office?

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Social security update – working from home but abroad

The Administrative Commission for Social Security (the 'Commission') published new guidance on 'teleworkers' within the EU/EEA (including Switzerland and the UK). The Commission also confirmed that the COVID-19 related guidance, whereby teleworkers working in another competent state from their usual competent state could remain insured in their usual competent state, ended on 30 June 2022 but on a concessionary basis the guidance will continue until the end of the year.

In summary, the new guidance confirms the following:

a. Teleworkers are defined as employees working cross-border outside the employer's premises, using IT to remain connected to the employer's working environment in order to fulfil the same tasks from a distance that the employer would assign at the office.
b. Teleworkers are posted employees if the general posting conditions are fulfilled, subject to the time-limitation of 24 months. In general, the work undertaken by the teleworker from home in the other state must be in the interests of the employer.
c. If the employee normally and permanently works from home, the employee (and employer) is subject to social security contributions in the country of the employer if less than 25% of the total work time is performed in the country of residence, based on an overall assessment of work performed over a 12-month period. If the work performed in the country of residence is greater than 25% then the social security contributions liabilities arise in the country of residence.
d. Special agreements can be concluded between two or more EU/EEA countries which enable the employee to continue paying social security contributions in their home country.

The definition of a teleworker and the applicable social security rules
The new guidance covers employees who work:

a. Outside the employer's premises and the same work is normally carried out
b. In an EU/EEA country different from the one where the employer's premises are located
c. Using IT to remain connected to the employer's working environment in order to fulfil the tasks assigned by the employer

Ordinarily, employees are subject to social security in the country where they (the employee) habitually work. However, the guidance helps to provide some concessions to this rule.

Posted teleworkers
Posted employees usually work in the country in which their employer is based and are temporarily sent on the employer's behalf to work in another EU/EEA country. A posted employee remains socially secured in the country of the employer.

The guidance establishes that the concept of working "on behalf of an employer", should be interpreted in its broadest sense but primarily for the benefit of the employer.

The following are examples provided by the Commission:

- An employer must temporarily shut office to carry out any renovation work and employees can continue to work from home
- The employee can only continue to work from home because they are the primary carer for a family member
- An employee agrees with the employer that working from home for a period of up to four weeks will help them better concentrate on a specific project
- An employee is on holiday and the employee agrees that they can stay on and work in that country for another month before returning home and resuming work in the office

The last bullet point confirms that "workcation" arrangements are possible so long as they fall within the Commission guidance and will not create any social security liabilities in the other country.

It is recommended that where any of the above arrangements are used, they are set out in writing and acknowledged by both the employer and employee.

Recommended next steps
Based on the guidance where any employees are/will be working from home but abroad, within an EU/EEA country, the following action points need to be considered:

- Ensure any arrangements to work from home but abroad are agreed in advance
- Consider what arrangements you, as the employer, are prepared to make available to your employees
- Always seek clarification concerning the income tax and social security treatment of any proposed arrangements
- The arrangement is confirmed in writing

Whilst this note only considers the changes recently announced by the Commission as they relate to the temporary arrangements for employees who are working from home but abroad, it is important for all arrangements be reviewed where:

- Employees are being seconded to/from the UK and another country
- Employees travel extensively on company business
- Employees from any overseas affiliated businesses/organisations are sent to work in the UK, even for a limited period of time

The unwary may not have fully considered the potential tax and social security position for an employee who is working in more than one country. A position which should always be rectified.

Latest update- Office for Tax Simplification (OTS) Review
The OTS has launched a review of hybrid and distance working – a call for evidence, looking for evidence of trends in relation to increasing numbers of people choosing to work in different ways, including across borders. The review will also consider whether the tax and social security regulations are flexible enough and what employers are experiencing as new ways of working.

Whilst the review will not see any immediate changes to the regulations, the OTS has over recent years played a significant part in making recommendations to the government which have been incorporated into new legislation.

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The ever increasing importance of safeguarding for INGOs

All charities have general duties to protect people and actively prevent harm, harassment, bullying, abuse and neglect. This is all the more important for organisations dealing with at risk individuals and groups.

Safeguarding remains a key area of focus for the Charity Commission, especially following the challenging environment the international non-governmental organisation sector has faced over the last five years. Guidance on safeguarding continues to be updated to reflect the current climate and the latest update includes a section on managing the risks when operating online. This can be found here.

The guidance is very detailed and must be for such an important area. Charities will need to ensure due care and attention is given in reviewing and updating their current policies to ensure compliance.

Some of the key areas are:

- Managing the risks and that safeguarding is a governance priority for all charities
- The types of risks and harms
- Policies and procedures expected including a code of conduct
- The need for checks on these policies periodically and on staff and trustee recruitment
- Protection of staff overseas
- Operating online

Charities are expected to be more fluid than before as to how and when potential safeguarding issues can be firstly unearthed, and then monitored and resolved. Operationally this could also involve the analysis of information already available to you, for example, exit interviews for field staff or debriefs of people leaving a country office. This will help to ensure the charity is aware of the risks on the ground for staff, volunteers and beneficiaries who are overseas.

Whilst policies and procedures are integral for charities to continue to manage these risks appropriately, it is important that employees trust the reporting process implicitly and it is well-managed. These policies include safeguarding, whistleblowing, health and safety, equality and diversity, bullying and harassment, as well as a reporting procedure and code of conduct. This will allow transparency in the process and people can raise concerns in the knowledge that they will be taken seriously.

Following the pandemic new risks and issues may have come to light but not have been reported on. Questions to ask may include:

- Have new staff and volunteers have gone through appropriate checks?
- What safeguarding measures are in place now that people are working from home more?

The impact of the pandemic will leave lasting effects on the sector and with current budget cuts from central government alongside the cost of living crisis, balancing sufficient resource in this area against deliverables is a challenge, no matter what your size.

The next steps for your charity

If you have not recently reviewed or updated your policies, it may be a good time to do so, certainly post pandemic. Your charity may now have increased contact with people who are deemed vulnerable through an increase of online services, and it will be important to build safeguarding measures into this delivery. Furthermore, your charity may have staff or volunteers who themselves are facing risks due to the pandemic or have had to take on new or different responsibilities which may not have had the same level of checks.

There are always audit implications to documentation (such as Serious Incident Reports), policies, controls and procedures which charities should be taking into consideration.

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Cash Transfers

I have seen an increasing number of clients raising questions about making overseas payments. Recently, this has been driven by a number of particularly challenging situations which have meant that utilising the formal banking system is either difficult or impossible.

Often, decisions need to be made at short notice in the context of very challenging operating environments. Such challenging environments can necessitate charities to look at the viability of transferring cash away from the formal banking system. Where this is necessary, I have seen charities consider a range of options ranging from established money transfer businesses, through to cash couriers. The Charity Commission published an updated alert on the use of cash couriers in early May 2022. It specifically warns against using cash couriers in all but exceptional circumstances. This is for many reasons, including the use of cash couriers by terrorist and criminal organisations.

When a charity is considering utilising methods outside of the formal banking system, it is necessary to step back and consider the potential risks of the arrangement. Charity trustees have a legal duty to protect charity funds and to ensure that those funds are utilised effectively. Using cash transfer methods outside of the formal banking system will often put charity funds at an increased risk.

A key consideration for trustees is whether the proposed arrangement puts charitable funds or charity staff and volunteers at undue risk. The level of risk will vary significantly depending on the proposed arrangements. For example, it would usually be expected that an established money transfer business, which is registered and regulated in the UK, would be significantly lower risk than the use of a courier to physically transfer cash.

The potential speed of the transactions is an important factor to consider. Where there is a pressing need, for example in the case of a humanitarian crisis, the use of an intermediary may be one way of facilitating prompt transfers of funds. Where the need is less pressing, the justification for the use of an intermediary may be less compelling.

Where a decision is made to transfer funds outside of the formal banking system, there should be a clear record of how the decision was made. This should incorporate a record of trustee involvement in the decision making process. The documentation should also record the reasons for the decision, and particularly address the reasons why the formal banking system was not utilised.

There should be a clear due diligence process on any service providers used, and it is important that a record of the checks is maintained. Due diligence checks should include understanding the regulatory status of the service provider and whether there are any legal issues with the proposed arrangements.

There are particular challenges when cash is moved outside of the UK. Many countries have legal restrictions in the amount of cash which can be brought into (or out of) the country. Charity Commission guidance strongly recommends that carrying cash is kept to a minimum. Charities should also ensure that they comply with their legal responsibilities such as declaring cash above £10,000 when carrying to destinations outside of the UK.

If cash couriers are used, the Charity Commission suggests that appropriate risk mitigations are put in place. Such mitigations include obtaining specialist insurance and ensuring that the cash courier carries documents evidencing the source and destination of funds and their association with the charity.

It is also important that appropriate financial controls are maintained. Expenditure should be subject to the same financial controls and processes as expenditure made within the formal banking system. There should be a proper record and audit trail of all transactions covering all stages in the chain of the transaction. There should also be appropriate checks to ensure that the funds are received by the intended recipient and, as far as possible, future transfers should be avoided until it can be confirmed that a previous transfer has been safely received.

Where these areas are relevant, I would strongly urge reviewing chapter four of the Compliance Toolkit issued by the Charity Commission. This contains helpful guidance, including a risk management checklist for using intermediaries, and a financial controls checklist. Use of these tools are one way in which trustees can demonstrate that they have taken appropriate steps to safeguard charity funds. If you are in any doubt as to the adequacy of the steps taken, I would strongly recommend taking appropriate professional advice or contacting the Charity Commission proactively.

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Risk Velocity – a valuable addition to your risk register

In recent years, the focus on risk management has typically been on rating risks by likelihood and impact, with various scoring matrices available to generate overall risk scores.

Risk managers might plot heat maps to give a visual of where each risk lies. Charities have used these tools to grade the risks included on their risk registers ensuring that sufficient time and focus can be given to mitigating higher scoring risks than those which are lower scoring. Whilst this has driven improvements in the assessment and management of risk by international charities, several new dimensions are increasingly being considered by the owners of risk registers, including those relating to risk velocity and risk appetite. Risk 'velocity' is defined as the speed at which exposure to a particular risk can have an impact on the charity.

A safeguarding incident in the field could have a huge impact for international charities, from damage to reputation, loss of funding and the potential for suspicion to spread to unrelated projects. This type of risk could typically be scored as having a low likelihood, high impact and high velocity. To contrast this, the emergence of a viral pandemic would have the potential for significant impacts upon operations (as we have seen since the emergence of COVID-19), and again the likelihood until recently could have been classed as fairly remote, but with this example the velocity would be deemed to be much slower than for our first example. This reduction in risk velocity, means the charity would have more time to implement mitigation strategies, including testing different options before the full impact of the risk is felt.

Measuring risk velocity, as with likelihood and impact, is not straight forward. We have typically seen charities adopting a three step model, ranging from moderate to fast and very fast. This can be overlaid as a heat map using colours or otherwise, or by using smaller and larger circles to plot the risks on the map.

It is important for risk managers to take care when incorporating velocity into their risk register. There is potential that the register could become too complex and onerous, or the users may lose the ability to clearly identify the higher risk areas they should be focusing on. It is also important to not lose sight of risks with a slower velocity. Historically, there has been a tendency to not focus on risks with a low likelihood, meaning there could be a danger that lower velocity risks are not taken as seriously. An example of this could be a change in regulation which is not due to impact the charity for a number of years, but where actions need to be taken sooner in order to ensure continued compliance.

The world moves much quicker than it did even five years ago, reputational issues at charities which previously may have taken months to manifest in public opinion can now spread via social media and traditional news channels in the space of hours or even minutes, generating demand for action. Charities need to be aware that many risks are now moving from potential to reality in a very short space of time, and the charity needs to have the tools and strategies in place to deal with this. Developing an understanding of risk velocity across the risk register can be beneficial in ensuring the charity is well prepared to mitigate against those risks and can continue to focus on the delivery of charitable activities to the beneficiaries.

It is the trustees' responsibility to review risk with sufficient regularity, and adding risk velocity as a critical third dimension, alongside likelihood and impact, can aid trustees in assessing risk areas. This will help to ensure that boards are correctly focusing their attention on those risks most critical to the continued success of their charities. We would recommend giving due consideration to this and please do speak to your usual haysmacintyre contact for further help.

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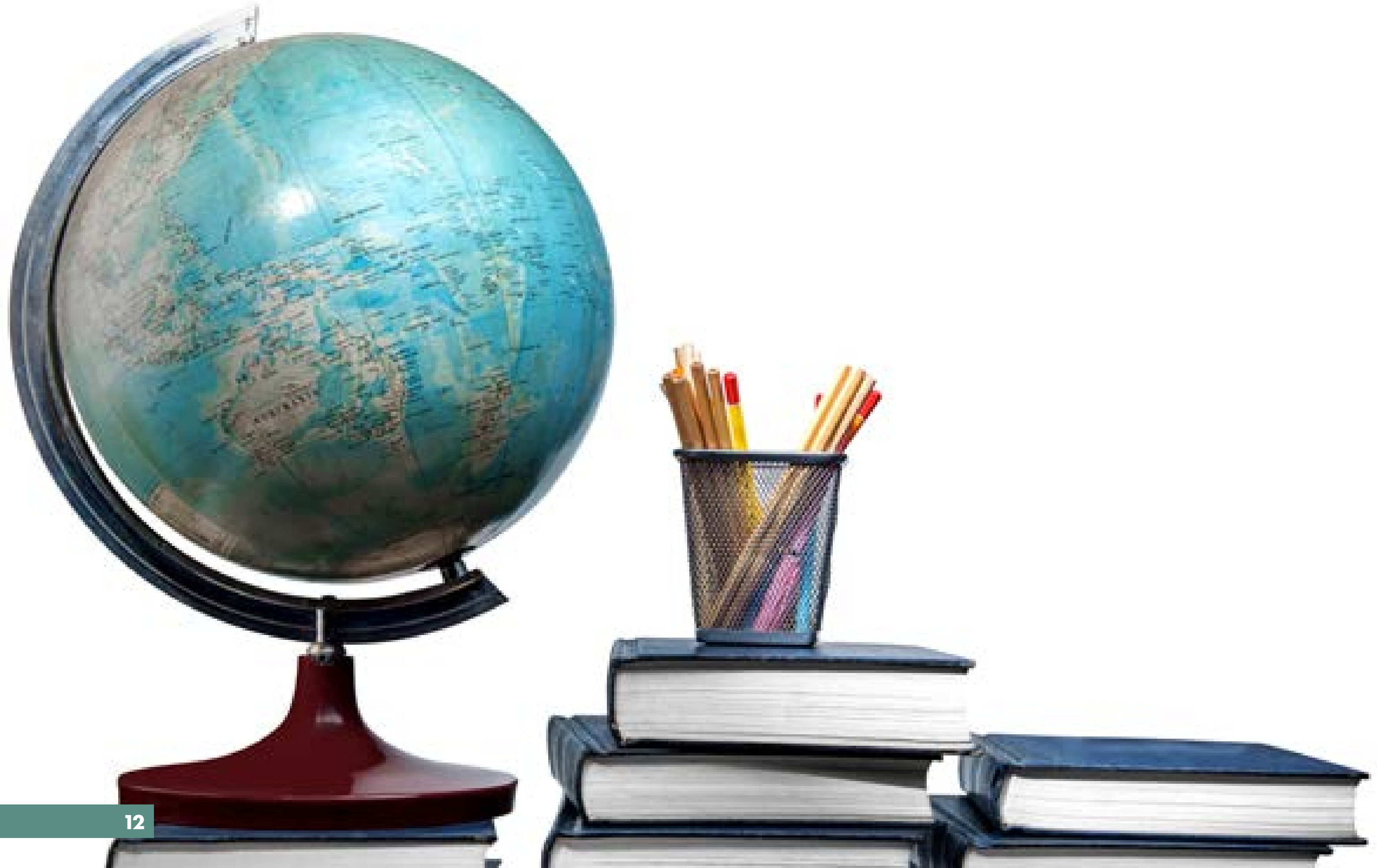

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