

## Let's Talk Fleet Risk - Episode 5

### Dr Paul Jackson, Fresh Air Training

**Simon:** Welcome to Let's Talk Fleet Risk - a podcast for those who manage drivers and their vehicles, and want to reduce road risk in their organisation. I'm joined today by fatigue expert Dr Paul Jackson, of Fresh Air Training. Paul is a chartered psychologist, specialising in human performance, and has assisted safety critical organisations to implement fatigue risk management systems for over 20 years in a career that has also included positions as Research Manager at the Department for Transport, where he was responsible for looking at impairment resulting from fatigue, drugs and alcohol; Visiting Lecturer in driver fatigue at Cranfield University; and as Head of Impairment Research at TRL. Paul was an expert witness in last year's landmark legal case, in which the Office of Rail and Road successfully prosecuted an employer for health and safety breaches, as a result of two of its employees being killed in a road traffic collision where fatigue was identified as the primary cause. The successful criminal prosecution demonstrated that having policies and procedures on fatigue management is not enough. In this podcast, Paul and I discuss the events leading up to the crash; what the company did wrong and why it was prosecuted; the key lessons for employers to take away from this case; and where to start when looking at fatigue management.

(transition)

**Simon:** Hi Paul - welcome to the podcast.

**Paul:** Good afternoon.

**Simon:** We're going to talk today about a double fatality due to driver fatigue that ultimately led to the successful prosecution of the company that employed the two who died. Now, Zac Payne was a trainee welder who was just 20 years old. He worked for a company called Renown Consultants, and was driving a company van at the time of the crash. He had his 48 year old colleague, Michael Morris, sat next to him in the front of the van. Now, Paul, you were involved in that case as an expert witness. The outcome should have significant implications for employers. I was wondering if perhaps you could start by just giving us an outline of the events that led up to this particular crash.

**Paul:** Sure. So, the events that led to the renowned prosecution occurred on the night of the 18-19 June, back in 2013. In the early hours of Wednesday 19 June, the two welders you mentioned, Zac Payne and Michael Morris, were killed when their van - the van they were travelling in - crashed into an articulated lorry, which had been parked in a lay-by on the A1. They had been on their way back to Doncaster, after a night shift in Stevenage, in Hertfordshire. The previous day, the day before the incident - so that's Tuesday 18 June - Zac Payne had driven another Renown crew up to a place to Alnmouth in Northumberland. He'd left Doncaster, where the depot was, at 4:15 in the morning, and that crew arrived at around 7:30 in the morning, and waited for the job to start. But for various reasons, that job was

cancelled, and so Zac Payne then drove the crew back to Doncaster, arriving at around 3 in the afternoon. In the meantime, an urgent job had come in which required two more welders for a job near Stevenage - a place called Langley Junction. And that job was going to happen on the 18-19 June - so that Tuesday night/Wednesday morning.

The company, Renown, allocated Michael Morris as the senior welder. And the only person they could find as the assistant was Zac Payne. So, they were allocated to do the job, and they set off for Langley Junction at around 7:15 in the evening. Mr Morris was driving, and they arrived at Langley Junction at around 9:45 in the evening. They had to wait to take possession of the railway, and that happened from around 11:15. They completed their tasks, and then set off on their journey home, just after 3:30 in the morning. And this time it was Zac Payne who was driving. At around 5:30 in the morning, the van had been travelling north on the A1, and straight off the carriageway to its near side, and into a lay-by where the articulated lorry was parked. Their van hit the articulated lorry and unfortunately, tragically, both Michael Morris and Zac Payne were killed. At the time of that collision, Zac Payne - the driver - had been up for around 26 hours.

**Simon:** So, in this case, the prosecution was brought by the Office of Rail and Road, rather than the Health and Safety Executive. but Renown were still prosecuted under the Health and Safety at Work Act. So, could you just explain what it was they were actually prosecuted for please?

**Paul:** They were prosecuted on three breaches of health and safety regulations; the 1974 Health and Safety at Work Act, and the 1992 Managing the Safety of the Workforce Act. So, the first breach was failure to manage the fatigue of their workforce. Secondly, for exposing employees and non-employees to the risk of injury arising out of fatigue. And thirdly, for failing to make a suitable and sufficient risk assessment before these two particular employees were sent out on that night shift.

**Simon:** So, fatigue was clearly identified in this case as the primary cause of these Fatalities, but, in the rail industry, fatigue is well known as a risk because they've got a large workforce that are often operating at night because that's when the tracks are free for maintenance or they're doing shift work. So what went wrong in this case on the management side? Did they have a system for managing fatigue?

**Paul:** They had procedures. They had, I suppose, the rudimentary elements of a fatigue management system. Certainly they were not without procedures. The procedures they had included a policy - a fatigue management policy, procedures for assessing the risks associated with fatigue, and particularly the procedure to authorise excess hours; so where somebody was being requested to work longer hours than normal, they had an authorisation form that was meant to be completed as a result of the risk assessment. What went wrong was that the company didn't follow its own fatigue management procedures. In addition to that, they didn't comply with the working time limits for safety critical work - such as welding - which require that there should be a minimum rest period of 12 hours between booking off from a turn of duty to booking on for the next duty. In addition to that, they didn't conduct a sufficient and suitable risk assessment - particularly of the fatigue of Zac Payne, who as I mentioned had been awake for a considerable length of time even before starting this job.

**Simon:** You see a broad spread of attitudes, shall we say, among companies towards risk. Where, at one end you have a total disregard - don't care, not interested in managing risk, just doesn't register and all they care about is running

the business, up to the other end, where managing risk is central to the business, and nothing happens unless it's done the correct way. In the middle, you often have people who maybe want to do the right thing but maybe haven't got the time or are under pressure, or they don't have the experience to do it properly. Are you able to say where Renown's management fitted on that scale?

**Paul:** Yes, and I think perhaps it's better for me to refer to the sentencing remarks of the judge in this particular case - His Honour Judge Godsmark. In his sentencing remarks he said that he was satisfied that if Renown had followed their fatigue management procedures - if they'd implemented them - that would have amounted to all that was reasonably practicable to negate the risk of injury through fatigue – but it was in the implementation of those procedures that Renown failed their employees. He went on to say that the operations managers at Doncaster knew what they were supposed to do in managing the safety of their employees - particularly in relation to fatigue - but, only lip service was paid to these systems.

He concluded that there was a wilful blindness of operations managers when it came to considerations of fatigue - particularly in relation to driving times and the distances to and from jobs. He also said that evidence from the employees - other Renown employees - suggested that safety briefings could be perfunctory, and concentrated on getting ticks in boxes. I think one of the other damning elements of the case was that although Renown was subject to annual audits from an independent third party, those audits didn't shine a light on the way in which those procedures - those stated procedures - were actually being applied, or not applied. And as a consequence, Renown failed to prove that they were doing all that was reasonably practicable to implement those written fatigue procedures. So, you have a weight of evidence there which suggests that this is a box ticking exercise. The management didn't really take fatigue seriously. And it probably suggests issues with the culture of the organisation. I think this is not confined to Renown, who weren't a bad company and are still operating today, so clearly are doing a lot right, but I think many organisations fail on this level whereby they may well have procedures written, on a whole range of safety issues, but they need to be collecting the data, documenting their actions, so that they can demonstrate to the regulator that they are following those procedures.

**Simon:** That attitude that you said was prevalent among the operations managers - I'm assuming that was just below board level - was that attitude reflected with the senior management of the business?

**Paul:** Very much so. The operations management were specifically referred to by the judge, and it's clear that that same attitude even persisted during the trial. I think one of the comments that the judge made was that, despite this incident having occurred in 2013 and changes having been made subsequently to procedures and particularly to Renown's policy on driver fatigue, that wasn't the change that was needed. The paperwork was adequate, he said; it was the implementation that needed to be looked at. Essentially, what was needed was a change in the culture of the senior management team.

**Simon:** I think you referred to it as a 'tick box culture' before, and that kind of thing is not just restricted to driver fatigue, is it? We see that for many companies, for many different elements of risk management as well. There was one thing that struck me when you were outlining the events running up to the incident - while Zac Payne was driving at the time of the crash, you said Michael Morris - his colleague - was driving to that second job that Zac was on. So was that Michael Morris' first shift, or had he also been at work for as long as Zac?

**Paul:** No, he'd rested that day. He hadn't worked in the same way that Zac had. He had already been scheduled to work that night shift so he was probably better prepared, or had the opportunity to be better prepared. I think one of the big problems with Zac Payne's situation was he was given very little notice of this night duty - and clearly not enough time to prepare adequately to be sufficiently rested before undertaking that night duty.

**Simon:** And clearly he would have been potentially at risk carrying out the work because he was fatigued - but I was intrigued because Michael Morris was plainly insured on the van if he drove to the job, so I was wondering why Michael Morris didn't drive on the way home, as Zac must have been clearly overtired.

**Paul:** Yes. I think there was an informal arrangement where one drove on the way, and one drove on the way back. That seemed to have been fairly standard practice within the organisation at the time.

**Simon:** One of the reasons Zac took on this extra shift, I believe, is that Renown was also found guilty of creating a staff payment structure that encouraged its employees to take on extra shifts - so he took on that extra shift because he would have been allowed to earn extra money. I think you mentioned that they had a policy around the authorisation of excess hours, so presumably, one of the management processes should have prevented him saying yes to that shift, or more to the point should have prevented him being asked in the first place.

**Paul:** Well I think the policy you're alluding to really is their zero hours contract. So, there was an incentive to work fatigued, because of course when they weren't working they weren't getting paid. Obviously that creates an incentive to take any shifts that are given to you - particularly for a young man like Zac who was keen to keep in with his employers. He was keen to get his welding qualification. He'd been given indication that he would be put on the next welder's course if he did as he was asked, so he was very keen to, A, take on extra duties; and B, to do everything he could to keep his management happy. Unfortunately the side effect of that is there's an incentive to hide fatigue and to continue working even when fatigue might be an issue.

**Simon:** The management failures weren't just around fatigue - there were also problems around the driver checks I think, weren't there? Because Zac wasn't really insured to be driving the van in the first place I don't think.

**Paul:** Yes, their insurance policy required drivers to be over 25 to be covered by the insurance. Zac was only 20. Clearly he was not insured, or covered by the insurance. But that seemed to be quite endemic within the organisation - to the extent that on the previous duty, the early duty, where Zac drove up to Northumberland, none of the crew in that vehicle were over 25 and qualified to drive. So clearly there was no possibility that they could follow their procedures, or their insurance policy procedures, for that particularly duty, so it was definitely a frequent occurrence, even though at the trial I think the management maintained that they were unaware of that. I think the general view of the court was that that was probably not the case.

**Simon:** I'm sure I read as well that the investigating authorities had interviewed a number of other staff within the business that backed up that that was a regular occurrence.

**Paul:** Yes, absolutely.

**Simon:** Because that's something I've brought up many times when I've been discussing the possibility of a prosecution. One of the things that employers need to be aware of is that the investigating authorities aren't just investigating your policies and procedures, and what you did; they will go and interview other people in the company, and they'll typically find some of the most disaffected employees who will tell it like it is. So there's very little opportunity for you to try and cover up something that actually is widespread practice within the business.

**Paul:** And I think that's very much the case with this particular investigation. As I said, this investigation lasted 7 years. During that time, the ORR interviewed I think about 70 or 80 different witnesses. The witness bundle runs to nearly 2000 pages. It was clearly a very in depth investigation. It didn't just stop with witnesses from within the organisation, but also witnesses from other organisations, people who had been on site at the time. There were also things like phone records, hotel records to see whether any employees were being given hotels after night duties - which was, again, one of their written mitigations for managing fatigue. A whole range of data was collected and analysed, so yes, a very, very thorough investigation.

**Simon:** There was one bit about this case that particularly staggered me, and you mentioned in your introduction at the start that the original crash happened in June 2013. So the fact that the length of time for the investigation and prosecution was a full 7 years for that to be concluded because, I think, the verdict was announced in March 2020, and then the sentencing was in June. So, a full 7 years under the stress of that investigation and prosecution. Did you see what kind of effect that had on those who were involved in the incident?

**Paul:** To a certain extent, yes. I mean, you can only imagine the stress, the anxiety, the impact on every aspect of your psychology, if you like, that having a case like that hanging over your head for that length of time must have had on those individuals. I think it was evident at the trial - this was clearly something that had been going on for so long the impact was inevitably going to be quite profound, in terms of its impact on their stress levels, if nothing else.

But of course, all of that pales in significance by comparison with the impact on the families of those individuals who were killed tragically. But yes, it's clear that the prosecution and the consequences of prosecution aren't limited to the fines that were imposed upon the company. I think the longer term impact on the management of that company would be equally damaging I suppose - it would be difficult to cope with.

**Simon:** Yes, absolutely. And without trying to minimise the stress and trauma that the families went through - as a business owners it's got to be an incentive to do this properly; to manage it properly. Now I'm sure we've got many employers listening to the podcast now who know that fatigue is an issue in their business - and maybe we've got some where it isn't recognised perhaps to the level it should be. What do you think are the main takeaways for employers from this particular incident?

**Paul:** There are a few. I think maybe the first starting point is, as you said, employers who recognise that fatigue is affecting their business - can you articulate that? What is it that you do that might be contributing to fatigue? What are the fatigue related hazards to the safety of your employees? That's the starting point. Is it because you're operating at night, like this company were? You do long hours? Whatever it might be, identifying the contributors to fatigue is the starting point for me. Secondly, thinking about what are the worst case scenarios - what could go wrong if an employee was exposed to fatigue? And then once you've identified those beginning

and end points, if you like, the next step is to be able to understand and identify what controls you have in place to prevent that contributor to fatigue resulting in an employee experiencing fatigue. So do you have sufficient controls in place for each potential contributor? How robust are those controls? How likely are they to be subject to degradation over time? Then, in the worst case scenario where an individual does experience fatigue, where your controls have failed, what mitigations do you have in place to prevent that fatigue resulting in the worst case scenario - for example a traffic accident. I think only when you can answer those questions adequately - as an employer, as the accountable manager of an organisation - it's only then you can sleep safely and recognise that you're doing everything you can that is reasonably practicable to manage and negate the risk of injury through fatigue. But the starting point for all of that is getting the culture right within the organisation. I think one of the main failings of the Renown business at the time of this incident was that lack of safety culture around fatigue. It wasn't recognised in the way it should be, and, as the judge said, paying lip service to the systems they had written. That's where the main failings are, and that's where I think an organisation really needs to start its more effective management of fatigue.

**Simon:** The fact that they had the policies shows that obviously they were clearly aware fatigue was an issue that needed to be managed, and that they didn't follow those policies, led to the accident. Obviously, if you weren't aware fatigue was a problem, you could have still had a similar accident. The fact that they demonstrated they knew that it was an issue by creating the policies - that's almost worse isn't it? Because it makes the failure a wilful failure.

**Paul:** Yes I can see where you're going with that. Very much so. As that judge referred to - a wilful blindness of the operations managers when it came to considerations of fatigue. So they recognised that what they were doing was likely to cause, or contribute to, fatigue, but, other matters got in the way of the effective management of that issue. I think, even though they had procedures in place, it was clear that the operations staff, at the Doncaster depot at least, didn't really understand how to use those procedures - which all contributed to that idea that this was just ticking a box to say 'yes, we've got procedures in place, they're compliant with the regulations' But of course, as you say, the fact that they recognised fatigue as an issue, and had stated how they managed it, and then failed to do so, was doubly damning I suppose is one way of looking at it.

**Simon:** You mentioned when we were talking about the staff contract structure, and the incentivisation of working extra hours, that they were on zero hours contracts. Is that a common thing in other sectors, for instance, where it could cause driver fatigue to be an issue?

**Paul:** I think in the last few years there's been increased recognition of the prevalence of what they call the gig economy which essentially is founded on multiple zero hours contracts. Having several different jobs with different employers - but each of those being a zero hours contract. I think yes it is more prevalent than it used to be. Whether it's more prevalent in certain industries than others... probably in the road transport sector - certainly delivery drivers, for example. I know there have been cases where organisations have been challenged on the nature of their contracts with their employees - partly on the basis that it's not an effective management of the health and safety of those individuals who, for all intents and purposes, are under the control of that employers - so, yes, I think it's certainly increased in prevalence in recent times. And I don't think it's a healthy situation as this case really demonstrates, tragically.

**Simon:** Yes. I wanted to ask you a final question just about fatigue more broadly, I Guess, and that's how conscious do employers need to be around staff personal Situations - where, it might not be obvious that the job itself is causing fatigue, but if the job involves driving, and circumstances in the employee's personal life might cause fatigue in another way. They might have sleep apnoea, they might have young children that keep them awake at night, they might have other anxieties or worries that cause them mental strain in other ways and prevent them sleeping properly. How much do employers need to take account of those kinds of issues?

**Paul:** Tricky isn't it. I think there's only so much that an organisation can do, in terms of managing fatigue within the business, and there is always going to be a requirement for the individual to take some responsibility for their personal fitness for duty. It's clear that fatigue doesn't just originate from either one source or the other. Clearly there are contributors to fatigue associated with the operational practices, as was the case with this particular company. There will also be a whole range of contributors to fatigue, potentially, which originate in the personal life of the individual; their lifestyle, their health, social activities, etcetera, etcetera. The conventional approach to addressing that potential problem or weakness in the system is to ensure that the culture is right around honest and open reporting. So, we often talk in fatigue management circles about the importance of shared responsibility. The employer has a responsibility to provide time off and adequate time to enable the individuals to have obtained sufficient sleep. The equivalent responsibility for the individual is to use that time to obtain adequate sleep. Secondly, the employer has the responsibility to take seriously any reports of fatigue that are brought to their attention, and to put in place the mechanisms, if you like, or framework - be it a form, or a reporting system - which gives individuals the opportunity to come forward and hold their hands up and say 'sorry, I'm too fatigued' but by the same token, the individuals within the organisation - the employees - have the equivalent responsibility to do so; to hold their hands up and say 'personal factors outside of work may be contributing to my fatigue'. That all requires, for many organisations, quite a significant change in culture. I can well believe that some of the people listening to this podcast will think 'well that's never going to happen in my organisation - people don't hold their hands up and say they're fatigued'. If that's the case, if you truly believe that, then you certainly need to do something to try and address that issue because that's always going to be a barrier. If you don't have the information, and people don't feel comfortable to come forward with that information, then how do you know what your fatigue risk truly is?

**Simon:** Paul, thank you for sharing your insights and expertise with us. If anyone has any questions on fatigue management, are you happy for them to get in touch with you?

**Paul:** Yes, it's been a pleasure to talk to you - and if anyone does have any questions that haven't been addressed by this particular podcast, by all means contact me - either via my website - [freshairtraining.co.uk](http://freshairtraining.co.uk), or by email - [paul@freshairtraining.co.uk](mailto:paul@freshairtraining.co.uk). You can also find me on LinkedIn.

**Simon:** Fantastic. Paul, it's been a pleasure to have you on the show - thank you very much.

**Paul:** Thanks very much indeed. Cheers Simon.

(transition)

Simon: If you manage drivers and their vehicles, and you face similar issues to

those discussed in this podcast, there are links in the show notes to some useful resources on the Driving for Better Business website. And these are all free to access. If you enjoyed the conversation, please don't forget to hit subscribe - so you know when the next episode is released. And please also give us a 5 star review, as this helps us to get up the podcast rankings, and makes it more visible to others who might also find it useful. You can follow us – that's Driving for Better Business on Twitter, Facebook and LinkedIn. And most importantly, please help us to spread the word. All our resources are free for those who manage fleets and their employees who drive for work. Thank you for listening to Let's Talk Fleet Risk, and I look forward to welcoming you to the next episode.