

Let's Talk Fleet Risk - Episode 6

Nina Day, Health & Safety Executive

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.

Welcome to the first podcast of 2022. The Driving for Better Business Campaign is focussing on loading issues this month, so we asked Nina Day from the HSE to join us for this episode. Nina has worked for the HSE for 21 years, she's a chartered mechanical engineer and a dangerous goods safety advisor specialising in road and workplace transport.

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Simon: Hi Nina - welcome to the podcast.

Nina: Thanks for inviting me – it's great to be here.

Simon: Now, Nina, I know that safe loading is right at the top of HSE's list when it comes to work related road safety. At DfBB we focus on commercial vehicles and HGVs tend to be heavily regulated but vans less so. What regulations apply to each vehicle category in respect of load safety?

Nina: Well, the regulations are the same regardless of the size of the vehicle, so it doesn't matter if it's an HGV or a passenger car – it's the same legislation. We have section 48 of the road traffic act, regulation 100 of the constructions use regulations and they both say the load has to be secured to prevent someone being injured. There's also the workplace safety aspect. If you're an employer or you're a self employed person whose work covers other people which covers a lot of people in transport, then you have legal responsibilities under the safe and healthy at work act and legislation to protect anyone who works for you, and also anyone who could be at risk because of your work, so that's wide ranging. These are 2 separate areas of law, but they do overlap. The responsibilities overlap quite a lot and it's the same regardless of the size of vehicle.

Simon: So, what are the common problems that you see where fleet operators get this wrong and you see unsafe loads? When the regulations are ignored, what do you see on the roads?

Nina: The fundamental problem where an incident has happened – usually a fatality or a serious injury – it's a lack of risk assessment or the risk assessment is so inadequate it may as well not have existed. That's something I've seen in the vast majority in load shift incidents I've worked on in the last 15 years. There are a lot of misconceptions on risk assessments – but it doesn't have to be bureaucratic and time consuming. It's just thinking through what you do, what could go wrong and what how to stop someone getting hurt if it does go wrong. HSE provides a lot of free guidance on our website. If you haven't thought things through, the chances of everything else being right are actually quite low. All the other issues we see follow on from not having the risk assessment right. It's also a legal

requirement so if you're an employer or self-employed, you do need to have a risk assessment.

The other issues I see a lot are people using the wrong load securing for the load they are carrying. Load securing equipment that is damaged or old and worn and not fit for purpose, or not using enough load securing. There's no specific method – it's up to you depending on the load you are carrying and the vehicles you are using. Whatever you do you must secure the entire weight forward and half the weight to the sides and rear. That is a minimum and if you secure to that level the load should stay where it is in an emergency stop, if you have to swerve to avoid a child, anything like that – the load should stay where it is.

A big issue at the moment is open vehicles, whether that smaller drop side type up to big tippers because people don't appreciate that loads can move upwards and when that happens loads can be thrown off the vehicle.

About 5 years ago a lady was killed when a piece of work equipment that weighted about 60kg bounced out the transit pickup and struck her as she and her husband were walking on the pavement. That item should have been secured and it wasn't. It bounced up so high it cleared the height of the sides and came off the vehicle.

Only last year a man was killed when a chunk of stone that only weighed 8kg bounced off the vehicle and came through his car windscreen. He was driving with his wife and grandchildren and killed instantly. No one sets out to kill anyone like that. I think one of the most difficult things I've ever read over the last 15 years in looking at load shift incidents was in a statement from a driver who had been involved in an incident and he started off by saying 'I never set out to kill anyone'. But if you're operating an open vehicle you need to make sure that load is properly sheeted, properly tied down, properly covered, big items tied down so they can't bounce out. Don't assume that the sides by themselves will stop the load from coming out.

Now, I think the last point I want to make is that when you're loading a vehicle you've got to make sure it's not overloaded. It's very easy to do with vans and smaller vehicles. Just be aware of what your vehicle is rated for and what you can put in it. When I'm out with the police and the DVSA I see a lot of overloaded vehicles. If you overload the vehicle if you don't distribute the load evenly across the load bed that will affect the handling of the vehicle. It might increase the braking distances or make it more likely to roll over so it's really important to think about how you load it and make sure you're not overloading it.

Simon: Brilliant, so to dig in a little bit deeper into a couple of those points. We were talking about items in an open back LCV or a tipper truck that can jump out. You could go over a pothole or a speed bump, or anything – I've seen that happen as well. One of the things we've quite often seen come out of compliance checks, trucks where all the big stuff is secured properly, so plainly they know what they are doing, but then they throw a few last minute items in the back, a bucket of bolts, a generator, a shovel. They know what they're doing but they just haven't done it with the last bits. One of the worst things we saw were a couple of power saws with uncovered blades which could do some serious damage if they jumped out. Is that something you see? That they know what they're doing but they just get it wrong at the last minute and throw a few bits in – it's that attention to detail that everything is secured?

Nina: Absolutely. I think there is an assumption that if something is very small it might not move and if it does come off, what's the danger? The reality is it doesn't have to be a big item. If it's flying off at 50 mph it could very easily kill a pedestrian or a cyclist, or go through

a windscreen and kill a driver. It doesn't matter how big the item is. I see it all the time. The larger items are secured really well. I see this with plant equipment on low loaders, The plant equipment is secured fantastically but any unused chains or straps are just left on the load bed and there's nothing then to stop it coming off the side and going into oncoming traffic and I actually helped a police force investigate a fatality where that happened. A chain slipped off the side and went into oncoming traffic and killed a driver. So whatever it is, even if it's a really small light item you need to make sure that it can't come off. If you have lots of small items, the easiest way to secure them – put them in a box or covered container and strap that down That's the easy way to do it – or just sheet the whole load bed and then nothing bounces out.

Simon: Because if you think that even a small item once it has momentum can do some serious damage can't it. The other thing we were talking about was weight distribution on the bed of the truck or LCV and making sure it's all strapped down properly but what happens if you've got drivers who are doing multiple drops, so you could start the day with a load where the centre of gravity is evenly spread across the axles but then as they make drops you could end up with the centre of gravity moving over one axle or it becomes too high and there's a risk of overturning. Do you see that?

Nina: On many occasions – I think very often drivers can be frustrated about that because they know it's a issue. What I would say is that multi drops are generally not unplanned. The company knows it is happening and this really comes back to the risk assessment. At that stage if you're a company delivering to lots of different sites, part of your risk assessment should be how are we going to make sure the vehicle is safe once bits of the load comes off. That might mean talking to the delivery site and making arrangements for it to be rearranged for the driver. I think it can be quite frustrating for drivers and I've spoke to a lot of drivers at road side checks who bring up this point. It's left to them to negotiate with the site to get their vehicle reloaded and sometimes that's refused. Sites say if we reload you we are taking responsibility. It's not from a legal perspective, particularly accurate, but it's quite a pervasive issue I think. It's very difficult because then you've got a dangerous vehicle going out on to the public highway. It is a company responsibility when you load a vehicle doing multi drops - you need to think about how it's going to stay safe once parts of the load are coming off

Simon: Let's look at responsibility a little more then. Typically, if someone is driving a vehicle that's falling foul of some road traffic act regulation – overloaded, shed load, even poor driving or vehicle maintenance, your typical expectation is that the driver would carry the can for that but when we are talking about risk assessing a load., how much involvement does a driver have there? I've heard stories where the driver has no awareness, he gets in the cab and is told to do the drops. Where does responsibility lie for ensuring safe load – presumably across a number of people?

Nina: Shared responsibility. Everybody in the transport chain – driver, transport operator, whoever put it on the vehicle – the consigner. From an HSE perspective we would consider the consigner to be the primary duty holder but everybody has some responsibility which is not the same as culpability.

While the driver may have some responsibility for the vehicle when its on the road, the driver is not necessarily culpable for the way its been loaded, the way the load has been tied down or not. There can be really good reasons for keeping drivers away from loading. If it's a big busy site, you don't want drivers run over by vehicles or forklift trucks. One of the risk assessments may be to keep the driver safe in a lorry park or in a safe waiting area and that's fine, not a problem, but if that's the route the site is going down then they should be

able to give the driver some assurance that the vehicle or trailer has been loaded properly and the load has been secured so the driver is confident he is going out with a safe load

In terms of enforcement, I think historically there was a temptation that it would all land on the driver and particularly at the roadside. That's not necessarily fair. The way that enforcement works now, it's very much if the driver is not felt to be culpable, the driver has not had the opportunity to make the load safe, or involved in loading, they will not get a fixed penalty ticket or points on their licence. The vehicle may be prohibited from onward travel until its made safe but it will not come personally to the driver, and it's the same with an incident. In the 15 years I've been looking at load shift incidents I can think of one where the driver alone was culpable. One incident in 15 years out of a few hundred so generally speaking when you have a load shift incident the culpability is actually somewhere else in the transport chain and that's what we would look at as part of the investigation

Simon: So that would be the point that you or one of your colleagues from HSE would go and start an investigation as to whether the other people in the business have done the risk assessment, and whether correct procedures are in place to ensure safe loading and all of that kind of stuff?

Nina: There are different ways this can work. If something happens on the road, the police have primacy for that. They can ask for help or they may do the investigation alone. They will also look at other parties in the transport chain as that shared responsibility is in the road traffic act. It is in section 48 - it says the driver and anyone who causes or permits a vehicle to be on the road are responsible for its safety so that's already in law for the police to look at that shared responsibility. Certainly, we do work with the police very closely on load security incidents. We can do a joint investigation, or we can support their investigation and that does work quite well.

Simon: There was an incident earlier in May 2021, there was a video going round that had been released of a gentleman and his wife driving out to lunch in his Tesla and as he approached a right hand bend a truck came round the other way – a flat bed truck with a load of concrete blocks on it – the driver of the truck took the corner too fast and the concrete was not secured and it slid onto the top of the Tesla, and it was only the safety structure that saved the driver and his wife because it pretty much trashed the rest of the car. I think you saw the clip at the time – that's an example of how loads can shift if they are not fitted on properly. I don't know whether anyone was found culpable for that?

Nina: I know the video and I think it surprised people – when loads move they do tend to move very suddenly. It can be quite difficult to imagine a heavy load of steel or concrete that had to be craned on or fork lifted on ever coming off. When you are standing next to a parked lorry looking at a load like that you wouldn't think it would move so quickly and suddenly. It does happen and I've seen it many times. I think these incidents often go under the radar and people are not aware of the scale of it These days more more and more people have dash cams so we are seeing more footage of this kind of incident, but I think seeing the reality of it does raise awareness that these things do happen. The potential consequences are horrendous.

Simon: It really was quite staggering to watch – we've got a link to the clip on our website so we'll put a link in the show notes if anyone hasn't seen it – so they can see what a scary experience that was.

Coming back to the one of the things you said earlier, about common problems relating to overloading. I've seen some quite comical pictures almost of vehicles that are so obviously overloaded, no one who saw that vehicle could be in any doubt that it was overloaded, but I

guess they are the exception, but you do see a lot of vehicles where they are overloaded to a lesser extent, and it's maybe not obvious, but they are significantly overloaded as a safety issue because its harming the handling and braking characteristics of the vehicle.

What sort of good practice should businesses be looking at to ensure they are not overloaded? Is it just a matter of training?

Nina: One of the key things is to be really sure of what your vehicle is rated for – I know that sounds silly but it does come up a lot at road side checks. I don't see as much overloading with the heavy goods vehicles. We tend to see it with the vans and the smaller pick up types of vehicles and sometimes people don't know what the vehicle is rated for or they have misunderstood what it's rated for. I was out once with the police and a 3.5 tonne body was brought in. The driver got out and said 'its fine, its fine – its rated for 3.5 tonnes and I've only got 3 tonnes in the back...' - there's nothing malicious there, not deliberately trying to evade the law it's just a misunderstanding of what the rating actually means. That would be my key point. Be aware of what your vehicle is actually rated for – it's not always obvious so just check what that's rated for under UK regulations. Check with the manufacturer if you need to. Look at what you're actually putting into it. I think with the van, most people would probably do this. You've got a van, you've got a cubic space. The temptation is to get the most in there you possibly can. So just be aware of what's actually going in there and that weight as it's very easy to go over – to overload it - and the fines for overloading can add up quite quickly.

Simon: I know one of the conversations I've had a number of times relating to multi drop couriers and home delivery services is that with everybody working from home and not going out socialising typically people are ordering a lot more alcohol for instance – wine and beers – and so a lot of the couriers are finding that they are delivering that to homes where it would have previously been less heavy cardboard boxes, it's now a lot of liquid which is far heavier than they are used to for a given sized box. We've heard stories where there's lots of overloaded vans, I've got that much space I can fill the space but they're finding what's going in is a lot heavier than a couple of years ago

Nina: This comes back again to the idea that it's not just on the driver here. If you're a business that is sending out goods for delivery to home addresses, and they're heavier loads you might need to revisit your systems, your risk assessment actually – do we have to change things. That's the key thing with risk assessments - it's not something you do once and never look at it again, it's a constant process because things do change. As we've seen with the pandemic people are working at home, ordering more things online. Things are changing and businesses need to change to make sure they are not straying into territory that's putting people at risk.

Simon: You mentioned the guy that put 3 tonnes into the back of a 3.5-ton lorry – it's such a safety critical error as it makes such an impact as to how the vehicle will handle. One of the things I've become aware of is in the vehicle recovery market where companies are recovering vehicles because people are not paying loans etc and recovering them on the back of a 3.5 tonne LCV rather than a larger vehicle. The payload on one of those is probably around a tonne if that so there's very few cars - a very tiny super mini - you could put on the back of a 3.5 tonne flatbed, yet you hear stories of larger vehicles so that could easily be overweight. What's the impact of someone doing that and what would be the likely consequences in terms of an investigation afterwards?

Nina: if an incident did happen and it happened because of the way the vehicle was loaded, if it happens on the road the police take the lead in investigating that and they may involve HSE or a local authority to look at the management system side. If it happens in the workplace then either we or a local authority would investigate. In any incident relating to

load, the general approach would be to look at every party in the transport chain – who has done what, have people thought about what they're doing, just to go back to what I said about risk assessment. Often people think there's a lot of paperwork and it's very much a box ticking exercise. You don't need to – you need a common-sense system in your business to manage safety and that's what we're looking for. So the best case scenario in an incident is that you are able to produce evidence of your system. Unfortunately, the incidents I've been involved in, that very often hasn't happened. It's come out afterwards that there really is no system. There's been a great reliance on the drivers making the best of things and doing the best they can. Drivers often make a reasonable job of it, and they keep things running but it doesn't mean the system is fundamentally safe and that's what we look for.

Simon: When you talk about the transport chain does that include sub-contractors? What if there's an incident with a vehicle and the vehicle operator / owner have fallen foul of some of these things we've been talking about – but that transport movement was commissioned by a client and the client hasn't checked to see whether the sub-contractor has got policies and procedures and knowledge to do it – does the client have any culpability?

Nina: It's fair to say no 2 incidents are the same – it depends on who is felt to be in control of the transport operations and I'm sorry I can't give you a nice black and white answer, but it is individual to the incident and the actual transport arrangements. It may be that you have a company who are the controller mind if you like and who are directing how things are done, but are not directly involved in the transport and that's something that would come out in the investigation, because there is a duty under health and safety law to cooperate and communicate with other companies you are working with -

Simon: So they would have a responsibility to be involved and ensure any sub-contractors knew how to do this properly and ensure they use competent people?

Nina: Indeed – don't just assume what was okay 10 years ago is still okay now – times change, technology changes. It may be there is a better way of doing things. I know since I started 15 years, equipment, new trailers have come onto the market. It's worth looking round and getting advice and seeing if there's a better way of doing things

Simon: What sort of resources are available to employers and fleet operators and their staff so they understand their responsibilities for risk assessments and safe loading?

Nina: I mentioned the HSE website earlier – we have risk assessment and workplace transport and load security resources on looking after visiting drivers, this is all free to access. You can also ask us a question directly. I know sometimes people are nervous because they think they are going to end up on a list for inspection – that's not true at all. You can use the form on the website or ring us up. We will answer your question and you won't end up on a list for inspection just because you've asked a question.

You can get guidance on load security from DVSA, from the gov uk site, there is all the DFT guidance, safety of loads on vehicles – those are both free to access and download. You can also get some really good advice from National Highways particularly for the smaller pick up type bodies - they have a really good leaflet on how to load safely. But it's also worth getting in touch with industry associations – if you're a member they will very often have their own resources. If you're in a union, speak to the union. I will say for drivers if you have a concern about the way things are being done - if you're in a union speak to the union rep. if you're not you can come to HSE directly and raise concerns with us. If there's something you think is dangerous and putting you or other people at risk, we do look at those concerns and we do act on them

Simon: Nina that's fantastic – we will put links to all those resources in the show notes so if you want to download any of those we have sign posts on the DFBB website to help you download and access those resources

It's been a a fascinating discussion, thanks so much for coming on the podcast Nina.

Nina: It's been a pleasure thank-you

(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.