

# Crash course

Vehicle rollover incidents can be catastrophic for all concerned. Andrew Woolfall, of Backhouse Jones Solicitors, takes us through some scenarios, their consequences – and solutions

Vehicle stability issues can arise for many reasons. And whether it is bad driving, a load shifting, a vehicle defect, unfortunate road camber or incorrect loading, there is always the possibility of a serious incident. Once in that territory, it is often a question of fate as to whether anybody is injured or, worse, killed. It may be luck that a vehicle does not roll over, but instead remains upright with its load intact. Fractionally different timings or circumstances might see the same vehicle and load spilled across the highway and the emergency services attending.

If VOSA or the police do investigate, the result might be a prosecution for a simple, non-endorsable, insecure load offence – or it could be much more severe. A great deal comes down to the enforcement officer and there is frequently a lack of consistency as to which offence is prosecuted. New initiatives between VOSA and the Health and Safety Executive (HSE) have, however, seen the publication of tables that suggest certain courses of action for specific types of insecure/unstable load – ranging from formal warnings to prohibitions or prosecution. But when proceedings are brought before the court, it can again often be a question of luck as to what a driver or operator might face.

Where proceedings are brought, defendants shouldn't forget that the burden of proof still remains with the prosecution. Readers may think that might be a low threshold, but the writer recalls one case where the police found themselves in difficulty. The matter involved a skip wagon carrying two skips stacked on top of each other. There was no roll-over or load shed, but the police officer concerned thought the vehicle and load were unstable and dangerous. Having heard evidence to the contrary from the defendant and industry experts, the magistrates were not so persuaded.

At the lowest end of the scale are offences for breaching Construction and Use Regulations, with regards to vehicle stability or load security. These do not attract penalty points or disqualification. Moving up the scale are endorsable offences under the Road Traffic Act 1988, which carry a minimum of three penalty points and discretionary

disqualification. Where there has been a rollover, a driver might face prosecution for driving without due care and attention. This can carry between three and nine penalty points, or disqualification with a fine.

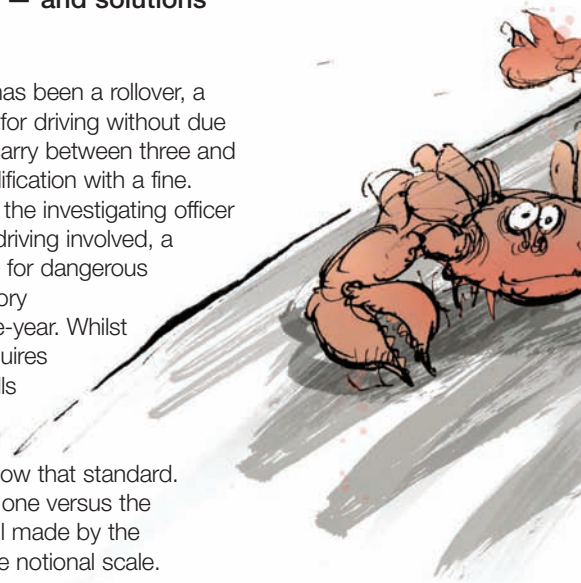
However, depending upon the investigating officer and the view he takes of the driving involved, a prosecution might be brought for dangerous driving, which carries mandatory disqualification for at least one-year. Whilst a due-care offence simply requires that the standard of driving falls below that expected of a competent driver, dangerous driving requires it to fall far below that standard. Nevertheless, prosecution for one versus the other is often a judgement call made by the investigating officer against the notional scale.

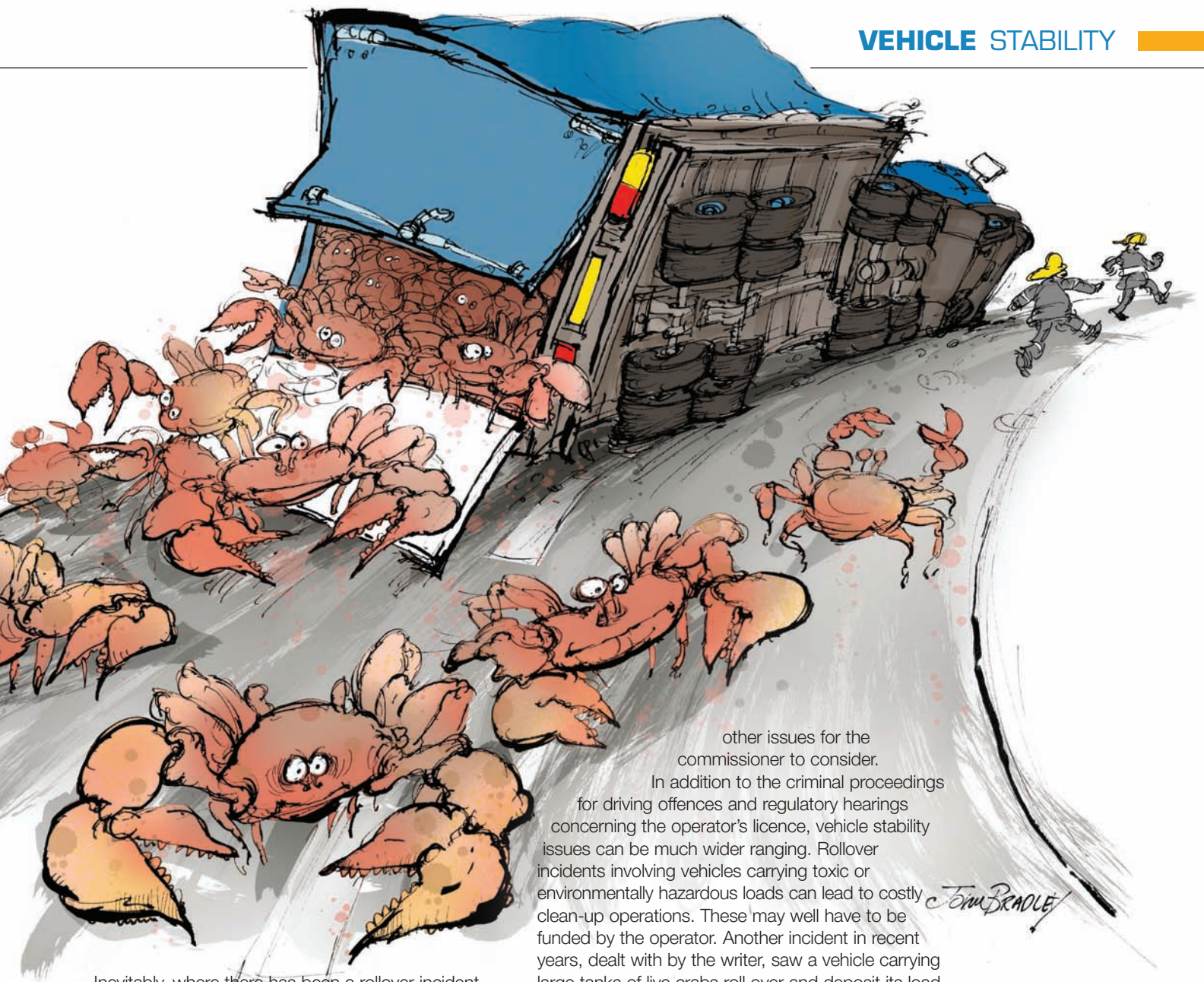
## Corporate manslaughter

If a rollover leads to a fatality, then the most likely prosecution is one of causing death by dangerous driving. Again, this involves mandatory disqualification, but also a significant chance that a custodial sentence will be imposed. Should the rollover occur as a result of poor loading practices or a vehicle defect, the operator might also face a similar charge, a prosecution under health and safety legislation or, at worst, corporate manslaughter. These offences for the operator could lead to substantial fines or, where the operator is an individual, again the risk of imprisonment.

However, it should always be remembered that, just because a vehicle rolls over, an individual is not always to blame. Several years ago, our firm was involved in a prosecution that had seen a vehicle roll onto an oncoming car, killing the car driver. The truck driver was prosecuted for causing death by dangerous driving, as the police alleged the rollover occurred due to excessive speed. The defendant was, though, acquitted when we were able to show that there had, in fact, been a puncture to one of the tyres, which had, in turn, induced a phenomenon known as slow roll. Speed was not the issue.

Criminal proceedings are not the only sanction that a driver or operator might face, though.





Inevitably, where there has been a rollover incident, the traffic commissioner is informed. Drivers will have to attend before the commissioner for driver conduct hearings, when consideration is given as to whether their vocational driving licences should be suspended or revoked. Operators can also face public inquiry hearings where the commissioner decides whether to take action insofar as revoking, suspending or curtailing the licence.

### Claw-back costs

One recent Inquiry was triggered after the operator concerned suffered its third rollover in the space of a single year. The type of load carried meant that its vehicles were susceptible to instability. While the operator could demonstrate that it had done everything within its power to minimise the risk (including commissioning independent studies and testing loading arrangements), and drivers had been disciplined and even dismissed, the rollovers led to a maintenance investigation that unearthed other issues. It may be rare for a rollover incident to be the only point under consideration at an inquiry, but frequently it does lead to other investigations and

other issues for the commissioner to consider. In addition to the criminal proceedings for driving offences and regulatory hearings concerning the operator's licence, vehicle stability issues can be much wider ranging. Rollover incidents involving vehicles carrying toxic or environmentally hazardous loads can lead to costly clean-up operations. These may well have to be funded by the operator. Another incident in recent years, dealt with by the writer, saw a vehicle carrying large tanks of live crabs roll over and deposit its load across the highway. While it may have been a source of amusement to those present, watching fireman and other clean-up crews trying to avoid being nipped, the operator would not have been so cheered when he received the bill.

Claims for compensation can also be made from the owners of goods damaged during any incident. Whether a load shifts on the vehicle, falls to the ground or is damaged in a rollover, someone will be required to pay. Operators might have insurance, but insurers will thoroughly investigate any such incident to try to avoid payment. If they are successful, then the compensation bill falls back on the operator.

Given the wide number of possible causes that can trigger stability or rollover incidents, it is critical that drivers and operators know how to recognise concerns and minimise their impact. As always, driver and staff training should be coupled with auditing and, where appropriate, re-training or disciplinary action. The authorities take the view that such incidents are entirely avoidable, so operators should do everything within their power to ensure that incidents do not arise. **TE**

*Tom Bradley*