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Risk control
Tree Safety –
Managing the Risks



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Tree Safety – Managing the Risks

Background

Whilst the risk of being injured or killed by a falling tree or branch is statistically very low, from time to time the British media carry reports of tragic fatal incidents involving trees. These incidents should remind landowners and those in control of land supporting trees of the need to manage the risks associated with them.

Where a tree is hazardous because of decay or structural weakness and shows external signs of being in such a condition the occupier of the land on which it stands is normally liable under UK law for any personal injury or damage that it causes. The occupier is whoever has possession of and controls the land.

This guide considers the liability risks of local authorities and land-owners acting as duty holders for trees on their or others property.

Why manage the risk?

Common law duty of care

Satisfying the common law duty of care involves taking reasonable care to avoid acts or omissions that cause a reasonably foreseeable risk of injury to persons or property. A duty of care may be established where a local authority has failed to exercise a statutory power.

Statutory duties

In England and Wales, liability is governed by the Occupiers' Liability Act (1957) [ref.1] and (1984) [ref.2]. The acts establish liability relating to persons who enter land or premises either by invitation or by permission, or other persons including trespassers. Within the provisions of the acts, the courts expect occupiers to be prepared for children to behave less carefully than adults; for example, by climbing trees which may have weak branches. It is especially important to consider this when designing and managing sites such as recognised play areas, where parents can reasonably expect children to play unaccompanied.

The courts expect occupiers to make regular inspections of trees that, by reason of their position, could place people or property at risk. It is also expected that they should, if necessary, obtain specialist guidance on the interpretation of symptoms and assessment of tree safety and to take reasonable steps to reduce risk where appropriate.

If specialist advice is sought, it should be followed. Failure to do so may be interpreted as negligence.

In Bowen [ref.3] the specialist tree inspectors formed a judgement that proved to be wrong, but the judge found their approach to be reasonable and thus did not find the defendant negligent or in breach of its duty.

Whilst a claimant must own any property affected by tree nuisance, the defendant need not own the offending tree. In such cases, the degree of control the defendant maintains over the offending tree is paramount to the case.

Health and Safety at Work Act

The Health and Safety at Work etc Act 1974 establishes general duties of employers and self-employed to persons other than their employees, and of persons concerned with premises to persons other than their employees [ref.4].

Corporate manslaughter

Companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care [ref.5].

The Highways Act 1980

This act sets out a general legal duty to maintain the public highway, which includes risks presented by street trees. The courts have interpreted 'maintain' as 'repair', and the 'highway' as the 'fabric of the highway' [ref.6].

Codes of practice

The Well-Managed Highways Infrastructure: Code of Practice for Highway Maintenance Management [ref.7] was published by the Roads Liaison Group in October 2016 and came into effect in October 2018.

The Code of Practice recognises the risks trees pose to users of the public highways and recommends that highway safety inspections should incorporate highway trees, including those outside but within falling distance of the highway.

It goes on to recommend that authorities should provide some basic arboricultural training for inspectors, but that specialist arboricultural advice is sought in respect of the appropriate frequency of inspections and works required for each individual tree that is considered to hold a high risk to users of the network.

Climate change

The Met Office [ref.8] suggests that the effects of climate change will include:

- Rising ocean levels – Rising temperatures are causing glaciers and ice sheets to melt, adding more water to the

oceans and causing the ocean level to rise. Oceans absorb 90% of the extra heat from global warming: warmer water expands, and so our oceans are taking up more space.

- Ocean acidification – Ocean acidification occurs when the ocean absorbs carbon dioxide and becomes more acidic. It is often called the 'evil twin' of climate change.
- Extreme weather events – Climate change is causing many extreme weather events to become more intense and frequent, such as heatwaves, droughts, and floods.

These factors are likely to increase the importance of maintaining effective and efficient tree risk management policies in order to maintain healthy tree stock, and manage associated defects in order to minimise damaging events and related costs.

Ash Dieback and other diseases and pests

Ash Dieback is the latest high profile disease to impact on the health and safety of the UK's tree population, but there are a number of other diseases and pests that have been identified that are likely to have an impact over the coming years [ref.9]. The risks from diseases and pests need to be incorporated into risk management plans and specific measures, such as Ash Dieback Action Plans or Biosecurity Plans [ref.10] implemented to ensure they are effectively managed.

Amenity

The guiding principle in achieving effective tree risk management is that duty holders recognise the importance of trees for amenity and nature conservation, and that they should be preserved. The purpose of a tree management strategy is to recognise trees as a resource for public and environmental benefit, and to identify standards for their management which ensures long-term conservation.

Response

For those in control of land containing trees, a planned management strategy should include:

- an overall assessment of tree stock in relation to people or property that prioritises by trees according to the risk of them causing personal injury or property damage
- implementing a proportionate regime of tree inspection (based on their risk priority) to identify and assess obvious tree defects or conditions
- managing the risk by using competent persons to undertake inspections and remedial treatments where appropriate

- maintaining records of the management strategy, inspections and remedial actions undertaken.

1 The overall assessment

The courts expect duty holders to make regular inspections of trees that could place people or property at risk. It is expected that duty holders should obtain, and act on, specialist guidance on the risk assessment of trees. A suitable and sufficient tree management policy:

- ensures the safety of the public
- resolves conflicts between the tree and its immediate environment
- promotes desirable growth characteristics and enhance amenity value
- benefits ecology and wildlife

2 Implementing a proportionate regime of tree inspection

Tree inspection:

Inspection may be a superficial informal observation, undertaken by an employee or agent, who understands the extent of the danger should a tree display visual defects.

More formal inspections require a general knowledge of trees. Formal inspections require an ability to recognise normal and abnormal appearance which indicates potential for serious harm or loss from tree failure. Inspectors will have to assess approximate tree height and falling distance from the tree to the area of use, and when to request a more detailed inspection.

Detailed inspections are carried out by a competent person, experienced in the field of investigation. The suitability of the inspector's qualifications, experience and professional indemnity and public liability insurance will form part of the due diligence checks on the part of the commissioning officer. Guidance on professional qualification and competencies may be found from a number of organisations (see [Useful Links](#)).

Inspection criteria

The type of tree inspection is influenced by the number and quality of trees and the type and nature of surrounding area.

Determining if a tree requires a detailed inspection is influenced by factors such as its size and condition.

The decision to make a detailed tree inspection takes into account the following factors:

Species

Physiological defects specific to species

Age of tree

Structural defects relating to age

Condition

Structural defects increasing the risk of failure in extreme weather.

Location

Vulnerability of surrounding structures if the tree fractures or falls.

Frequency of use

Likelihood of injury to public if a tree were to fail, related to frequency of use.

Tree population

The size and distribution of the tree population affects the frequency of the tree inspection programme.

Timing

Trees are best inspected when in full leaf, from mid-summer through to autumn. Leaf coverage is an indicator of state of health of the tree.

Reducing risk by managing access

Well-established techniques to reduce potential risks from trees include:

- placing structures beyond the falling-range of trees, relocating facilities such as play equipment, seats and picnic tables
- redesigning mown paths in areas of long grass, directing people away from high-risk zones, or re-routing paths and tracks where legally allowed.

Tree inspections and subsidence risk

The potential for subsidence damage is part of any tree inspection policy and procedure.

Subsidence is normally a problem on shrinkable clay soils.

Properties are at the highest risk with shallow foundations, this includes most Edwardian and Victorian houses in the UK.

Tree roots can cause desiccation of the ground near to a building causing the clay soil to shrink leading to subsidence. However, there are many factors which can lead to subsidence and you will need a thorough investigation and inspection by a qualified experienced tree specialist.

Removing problem trees adjacent to a property can cause the ground to swell, leading to building damage due to heave – the opposite of subsidence.

Insurance

Although trees can fail at any time, winter storms and heavy rain can result in tree failures leading to loss. Land owners are advised to have insurance appropriate to their circumstances and to ensure that anyone who advises them, or does work on trees, is also adequately insured.

3 Competent persons to undertake remedial treatments

Only competent (qualified, experienced, trained, skilled) persons may be permitted to carry out hazardous work on trees. Work must be undertaken with the health and safety of the competent persons, and anyone who could be affected by their work, of paramount importance. Ensuring adherence to The Health and Safety at Work etc. Act 1974, and the Management of Health and Safety at Work Regulations 1999 [ref.11], should be part of the due diligence checks on the part of the commissioning officer [ref.12].

Selecting a contractor

When evaluating the competence of a tree surgeon or consultant, ask the following:

- Can the contractor provide evidence of competence in tree work?
- Is there evidence of formal training for the contractor and staff?
- Does the contractor have insurance cover (see below)?
- Have risk assessments and safe systems of work been provided?

The national standard for tree surgery work is defined in British Standard 3998:2010 'Tree Work. Recommendations' [ref.13]. This should be the basic standard of competency, followed by all tree surgeons and contractors.

4 Maintain records of the adopted strategy / policy

Records, including maps, form part of the review process in good risk management practice. In the event of an accident, records are an important proof of reasonable tree management. Records include the policies and procedures for the regular inspection of trees. The creation and maintenance of computer generated tree inventories and management records may assist with the monitoring programme. Records demonstrating adherence to procedure are essential – even if nothing unusual is observed during inspection, this fact should be noted.

Demonstration of compliance with policy, such as frequency of inspection, is part of the armoury of a successful claims defence. Factors such as extremes of weather, or construction work in a tree's immediate vicinity may initiate monitoring of the stability of a tree. Responses to such events should be recorded.

Outline of legal responsibilities

There is a body of statute law relevant to local authority liability and land-owners for trees. The References section below identifies key Acts and Regulations that apply.

Below is a (selective) list of civil law concepts that apply to this guidance, and attempts to summarise the extent of liability as defined by current civil and case law.

Local authorities have a responsibility to take reasonable care to avoid acts and omissions which could reasonably foreseeably injure a neighbour. Donoghue created the modern concept of negligence, by setting out general principles whereby one person would owe another person a duty of care [ref.14],

No one can exclude or restrict their liability for the death or personal injury of another resulting from their negligence. Liability for negligence in other cases of loss or damage can be excluded or restricted only if it is reasonable to do so [ref.15].

Where an occupier invites others onto his land, or has trespassers, he owes a minimum duty of care for personal safety [ref.1], [ref.2]. Section 2 (2) of the 1957 Act establishes a duty to "... see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there"; under s. 2 (3) (a) of the act an occupier must be prepared for children to be less careful than adults, such as climbing trees which may have weak branches. It is important to consider the design and management sites of recognised play areas, where parents can reasonably expect children to play unaccompanied.

The definition of reasonable is not fixed. In Robbins [ref.16] the High Court held that tree roots could cause reasonably foreseeable damage to shallow foundations, such as building extensions.

Bringing hazards to the notice of visitors comes within Section 1 (5) of the 1984 Act [ref.2]. The occupier discharges his duty "by taking such steps as are reasonable in all the circumstances of the case to give warning of the danger concerned or to discourage persons from incurring the risk". The sign must be clear enough to ensure that the risk is obvious to the user or trespasser. Warning notices

are often considered inadequate for children, who may be either unable to read or unable to appreciate the danger.

Summary

Under both civil law and criminal law, an owner or controller of land on which a tree stands has responsibilities for the health and safety of those people on or near their land and thus has potential liabilities arising from the falling of a tree or branch.

For local authorities and large land-owners that may be responsible for tens of thousands of trees, it is clearly unreasonable to expect that every tree is individually assessed and inspected. However, by the adoption of a pragmatic system of management, effort and resource can be directed to where the most significant risks arise.

References

- 1 Occupiers Liability Act 1957, sect 2 (5)
- 2 Occupiers Liability Act 1984 s 1 (Duty of Care)
- 3 Bowen v National Trust EWHC 1992, QB
- 4 Section 3 (1) The Health and Safety at Work etc. Act 1974
- 5 Corporate Manslaughter and Corporate Homicide Act (CMCHA) 2007
- 6 Highways Act 1980
- 7 Well-Managed Highways Infrastructure: A Code of Practice, October 2019, The Roads Liaison Group
- 8 Met Office, What is climate change? [Online] Available at: <https://www.metoffice.gov.uk/weather/learn-about/climate-and-climate-change/climate-change/index> (Accessed on 20th November 2020)
- 9 Woodland Trust – Key Tree Pests and Diseases online at: <https://www.woodlandtrust.org.uk/trees-woods-and-wildlife/tree-pests-and-diseases/key-tree-pests-and-diseases/>
- 10 Arboricultural Associations Application of Biosecurity in Arboriculture – Guidance Note 2, free Ebook available online at: <https://www.trees.org.uk/Help-Advice/Biosecurity-Guidance>
- 11 Management of Health and Safety at Work Regulations 1999, Regulations 3, 4, 5
- 12 Health and Safety Executive (2013) – Management of the risk from falling trees or branches

- 13 BS 3998:2010 Tree work – Recommendations Publication
Date 31 December 2010 BSI-global
- 14 Donoghue vs Stevenson [1932] AC562
- 15 [Unfair Contract Terms Act 1977](#)
- 16 Robbins v Bexley London Borough Council –17.10.13 –
Court of Appeal

Useful Links

[Arboricultural Association – Advance the science of arboriculture for the public benefit](#)

[LTOA London Tree Officers Association](#)

[Royal Institute of Chartered Surveyors, Trees People and Buildings](#)

[Visitor Safety in the Countryside: Tree Safety Management](#)

[Subsidence Support Landmark Information Group](#)

Institution of Structural Engineers “Subsidence of Low Rise Buildings” 2000 ISBN:1 874266 549

The Law of Trees, Forests and Hedgerows by Mynors C Sweet & Maxwell (2002), 2nd edition Dec 2011 ISBN: 97818470391 49

Common sense risk management of trees. Landowner summary of guidance on trees and public safety in the UK for estates and smallholdings.

NTSG ISBN 978-0-85538-841-6

Forestry Commission ISBN: 978 0 580 53777 6

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

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