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**Risk control**  
Tree Safety – Managing  
the Associated Risks



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# Tree Safety – Managing the Associated Risks

## Background

Whilst the risk of being injured or killed by a falling tree or branch is statistically very low, the recent death of a woman in central London should remind landowners and those in control of land supporting trees of the need to manage the risks associated with them.

The high winds experienced resulting from the tail end of hurricane Gonzalo also injured several other members of the public and caused widespread damage and disruption throughout the UK. 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 defined as the person 'occupying or having control of the premises', and this effectively means 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

The duty of care is to take 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.a] and (1984) [ref.b]. 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.c] the specialist tree inspectors formed a judgement that proved to be wrong, but the judge did not find the defendant negligent or in breach of its duty.

Whilst a claimant must own any land 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.d].

In late 2013 a large estate was fined £140,000 after pleading guilty to breaching Section 2 (1) of the Health and Safety at Work etc Act 1974. In this case an operative died after being struck in the head and body by a 36 metre tall tree which had been uprooted and knocked over by another tree being felled.

### 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.f]. The application of corporate manslaughter charges in highway maintenance has resulted in a Hampshire road sweeping company being fined

£8,000 with £4,000 costs, after a worker was crushed to death while carrying out maintenance on a road sweeper. The company's sole director pleaded guilty to charges under section 2 of the Health and Safety at Work Act, and was fined £183,000 plus costs of £8,000.

### 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.g].

## Codes of practice

The Well-Maintained Highways: Code of Practice for Highway Maintenance Management [ref.h] was published by the Roads Liaison Group in July 2005. The recommendations of the code are explicitly not mandatory on authorities. In these circumstances, where authorities elect in the light of local circumstances to adopt policies, procedures or standards different from those suggested by the code, it is essential for these to be identified, together with the reasoning for such differences.

The Code of Practice depicts three issues of liability associated with highway trees:

- damage to buildings arising from subsidence linked to trees and tree roots
- damage or injury caused by falling trees and branches
- damage or injury caused by tree root damage to highway surfaces

## Climate change

The Met Office [ref.i] suggests that in the future, the UK will be affected by climate change in a number of ways:

- increased carbon dioxide levels will increase rates of plant growth and perhaps development (bud burst, flowering and leaf fall)
- changes in temperatures are expected to bring an earlier onset of growth in spring and a longer growing season
- higher temperatures and decreased summer rainfall will cause stress, especially in plants with extensive, shallow, fibrous root systems
- annual moisture content of soils is likely to decrease by 10-20% across the UK by the 2080's, with substantial reductions (of 20-50%) in soil moisture possible in the summer by the 2080's
- fungal diseases will thrive with the wet winter conditions.

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.

## Amenity

The guiding principle in tree risk management is that duty holders recognise the importance of trees for amenity and nature conversation, and that they should be preserved. The purpose of a tree management strategy is to recognise the tree as a resource for public benefit, and identifies a standard for its management which ensures its long-term conservation and development for the enjoyment of the public and environment.

## Response

For those in control of land containing trees, a planned approach to their management should include:

- an overall assessment of tree stock in relation to people or property that prioritises by 'zoning' trees, according to the risk of them falling and causing serious injury
- implementing a proportionate regime of tree inspection (based on their risk priority) to identify and assess for obvious tree defects
- manage the risk to an acceptable level by using competent persons to undertake remedial treatments where appropriate
- maintain records of the adopted strategy / policy, inspections and works performed.

### 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 safety 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 way the asset is used, and 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 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 use. Determining if a tree requires detailed inspection is influenced by its size, condition and the level of use within its falling distance.

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 of amenity

##### **Tree population**

The size and distribution of the tree population affects the frequency of 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**

Winter storms and unpredictable events 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 to trees, is also appropriately and 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.i](#)], should be part of the due diligence checks on the part of the commissioning officer [[ref.k](#)]. In a recent example of a company failing to provide certified competent operatives, a contract tree-clearance company was fined £7,000 after pleading guilty to breaching Section 2 (1) of the Health and Safety at Work etc. Act 1974.



### Selecting a contractor

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

- Can the operator provide evidence of competence in tree work?
- Is there evidence of formal training for the operator and staff?
- Does the operator 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: 1999 'Tree Work Recommendations' [ref.l]. 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 safety 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 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. Identification and recording of these 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.m], [ref.n].

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.o].

Where an occupier invites others onto his land, or has trespassers, he owes a minimum duty of care for personal safety [ref.a], [ref.b]. 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.p] 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.b]. 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-Maintained Highways: Code of Practice for Highway Maintenance Management July 2005 Roads Liaison Group
- 8 [Met Office, 2010](#)
- 9 [Management of Health and Safety at Work Regulations 1999 reg 3. 4. 5](#)
- 10 Health and Safety Executive (2007) –
- 11 Management of the risk from falling trees
- 12 [Health and Safety Executive Agriculture Industry Advisory Committee Arboriculture and Forestry Advisory Group](#)
- 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 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 RMP risk control consultant or account director.

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