

Ref No 9001 (v10)

Liability for Hazardous Trees

The owner and/or occupier of land upon which trees stand is generally liable for any loss or damage resulting from falling branches or from the falling of the tree itself. Whilst the incidence of accidents is low falling branches have resulted in deaths and caused serious road accidents.

Whilst no single source of statistical information exists the indications are that the number of instances when people are struck by falling branches or trees is low. However, there have been a small number of serious incidents and such events usually attract a high level of media attention.

Anyone with responsibility for land or trees should put in place procedures to identify and manage the risk. If there is any doubt about the status or ownership of land containing trees landowners are strongly advised to clarify the situation as a matter of urgency. In the meantime it would be sensible to assume ownership and responsibility and take action as necessary in order to minimise potential future liabilities.

Liability of Tree Owners

Occupiers and anyone with responsibility for trees e.g. a tenant. Must take reasonable steps to manage and reduce risk and this includes identifying and inspecting those trees that might cause injury or place property at risk. When hazardous trees are identified suitable remedial action must be taken to reduce risk.

In addition to existing statutory requirements the Courts expect owners in control of places to which the public has access, such as parks and gardens, to take greater care than those in control of more remote woodland. The Courts expect occupiers to be prepared for children to behave less carefully than adults and thus consideration must be given to whether children might suffer injury from climbing trees which may have weak or damaged branches.

It is necessary to have in place suitable and sufficient systems and procedures to ensure that the risks are identified and controlled.

Inspections and Risk Assessments

It is essential that a planned inspection programme is established which ensures trees are inspected as often as is necessary. Inspections must only be undertaken by a suitably experienced and competent person and should lead to the carrying out of a risk assessment.

Inspections are best made in September or early October unless there are indications that checks need to be made immediately e.g. after severe storms. The initial visual inspection may indicate that more detailed examination is required. The inspection should include the entire tree, not just those parts that appear in a poor condition or in danger of falling.

There cannot be specific guidance on the exact nature and frequency of inspections since it is entirely dependent upon risk. There are various sources of guidance on this, for example the Arboricultural Association recommends

- Frequency of inspection to be related to condition and the risk of failure
- Annual Inspection (as a minimum)
- Additional inspections following storms or severe weather events

Whilst other sources indicate less frequent inspection what is beyond doubt is that those trees located in the highest risk locations e.g. adjacent to roads or overhanging third party property or of a species more liable to disease or decay should be inspected more regularly.

A risk assessment will help establish what needs to be done and should consider the following:

- Location of the tree(s) in relation to people, property and adjacent thoroughfares
- The age and condition of the tree(s)
- Species— some trees are better able to withstand decay
- Nature and type of any damage, decay or fungal attack

Inspections should concentrate on those areas where there is a significant risk to persons or property.

Typical higher risk locations would include woodland containing paths and recreational areas or adjacent to a public highway or thoroughfare. In such locations there might need to be regular inspections after any period of severe weather in addition to an annual inspection. However, where there is limited risk e.g. in remote areas where there is little public access the frequency of inspection can be reduced.

It is also generally agreed that more frequent "walk by" inspections need to be supported and supplemented by more detailed inspections carried out by more experienced and competent persons. Such inspection may also require high level access to enable close inspection of disease or decay and facilitate adequate inspection and assessment.

Assessing Competence

A person is generally regarded as competent if they possess a suitable mix of both formal qualifications and practical expertise. There are a number of relevant qualifications including:

- Examinations and certificates offered by City & Guilds and the Royal Forestry Society
- National Certificates
- BTEC
- Foundation Degrees/B Sc (Hons) Degrees

However, in addition to the above, individuals should also be required to demonstrate their expertise by for example, length of employment in the field, employment as a skilled person in a position of responsibility etc.

Using Contractors

Whilst it is possible to carry out both inspections and remedial work using ones own employees there are times when it may be preferable to use contractors.

However where a contractor is used it is essential to ensure that any person carrying out work is competent and holds adequate Public Liability insurance that covers both the contractor and their employer, i.e. the occupier against any unforeseen consequence of the work.

In the event of an accident the occupier may be held liable if the contractor does not have suitable or sufficient insurance.

Case law has confirmed and clarified the responsibilities regarding the liabilities of the employer (*Poll v Viscount Asquith* 2006). A motorcyclist suffered serious injuries when they collided with a fallen tree. The landowner was found liable even though they had hired a forestry inspector. But it was held that the contractor was not sufficiently experienced. He had relied on "drive by" inspections and not carried out a closer inspection of a tree that clearly should have received one.

Local Authorities

Local Authorities have certain powers to deal with dangerous trees that overhang the highway. They can give notice to the owner requiring them to cut or prune the tree. If the owner fails to comply the Authority may carry out the work and charge the owner. (Highways Act)

Local authorities retain control of trees that are covered by Tree Preservation Orders.

Risk Control

There are several control methods that can be used to reduce the risk:

- Modifying usage e.g. by re-routing paths and walkways or moving car parks or recreational facilities
- Tree surgery
- Bracing or propping
- Felling

The most appropriate action will depend upon the circumstances. If the tree is of no significant value then felling may be a suitable option. However, if the tree is of great value e.g. a specimen, one of historical significance or part of a wildlife habitat then re-routing of adjacent footpaths may be the more suitable approach.

It is possible to reduce the development of hazardous situations by preventive measures such as staking of young trees, harvesting and woodland management. Where such management has not been taken, hazardous situations may have arisen.

Over Hanging Branches

It is well established in law that neighbours have a legal right to trim overhanging branches (and roots) however they must return the cut branches. But they are under no obligation to consider any effect of the tree from their pruning e.g. unbalancing the tree.

Thus occupiers are strongly advised to liaise with neighbours and offer to prune so as to avoid the risk of inappropriate action being taken.

Tree Felling

It is a criminal offence to fell a tree without first having obtained the necessary licence from the Forestry Commission. There are certain exceptions to this requirement that include, but are not limited, to the following:

- Small trees (as defined)
- Trees in gardens
- Trees in certain locations such as designated open spaces
- Trees that need to be felled to prevent danger

Legislation

Under the Health and Safety at Work etc. Act 1974, all occupiers have responsibilities to ensure the safety of those not in their employment. "Occupier" is generally taken to mean any person occupying or having control of premises, in this case land.

Thus there are clear legal responsibilities to assess risks that arise from trees and take suitable and sufficient steps to control such risks.

In addition, occupiers have duties under the Occupiers Liability Act 1984. This states (s2) that the occupier owes a "common law duty of care" to visitors and those who enter his land or premises and this duty of care extends to trespassers. In Scotland there is no such distinction in the law.

Key Action Steps

If you are in control of land that contains trees then you should:

- Secure competent advice
- Develop a procedure to identify those trees that present the greatest risk
- Set up a regular programme of inspection
- Take remedial action as necessary

Sources of Information

- Hazards from Trees – A General Guide ISBN 0-85538-514-6
- Tree Felling – Getting Permission

Both published by Forestry Commission and free to download from their website
www.forestry.gov.uk

Trees and the Law ISBN 0 900978 15 5
Published by the Arboricultural Association
Tel: 01794 368717

Note: The Association also publishes lists of Registered Consultants and Approved Contractors
<http://www.trees.org.uk/index.php>

Institute of Chartered Foresters
Tel: 0131 240 1425
<http://www.charteredforesters.org/>

Aviva Risk Management Solutions Hardfacts
1006 Control of Contractors

Ref No 9001 (v10)

Aviva Risk Management Solutions operate a Risk Helpline during normal business hours for the cost of a local telephone call. The telephone number is:

0845 366 66 66

www.aviva.co.uk/risksolutions